CONFERENCE COMMITTEE REPORT
DIGEST FOR EHB 1392

Citations Affected: IC 21-10-2-1; IC 27-1; IC 27-8-8.

Synopsis: Insurance matters. Amends HEA 1006-2006 concerning school corporation pooling for insurance to require creation of a trust, specify the aggregate retention and school corporation contribution levels, and maintenance of a fidelity bond. Defines "commercial policyholder" to include a business, nonprofit, or governmental entity that purchases a commercial policy. Removes certain requirements concerning commercial insurance issued by an insurer that maintains a certain rating. Changes reporting requirements for insurers concerning commercial insurance. Repeals a provision that requires an insurer that insures a public entity as an exempt commercial policyholder to maintain a certain rating. Requires a foreign or alien insurance company that provides certain surety bonds to appoint the commissioner of the department of insurance as the company's agent for service of process in certain actions. Amends the life and health insurance guaranty association (association) law. Specifies certain information concerning: (1) association coverage for Indiana residents and nonresidents insured by domestic and nondomestic insurers; (2) association accounts; (3) assessment procedures; (4) subrogation; (5) powers and duties of the association, the board of directors of the association, and the commissioner of the department of insurance with respect to the association; (6) plan of operation of the association; (7) prevention of insolvencies; (8) immunity; and (9) notice to policy owners and contract owners. Repeals and replaces provisions concerning association coverage. Allows certain members of the political subdivision catastrophic liability fund to withdraw from the fund and receive a rebate of a part of the member's previous assessments. Makes a conforming amendment. **(This conference committee report: (1) Amends HEA 1006-2006 concerning school corporation pooling for insurance to require creation of a trust, specify the aggregate retention and school corporation contribution levels, and maintenance of a fidelity bond. (2) Adds language from SB 162-2006, including language that: (a) defines "commercial policyholder" to include a business, nonprofit, or governmental entity that purchases a commercial policy; (b) removes certain requirements concerning commercial insurance issued by an insurer that maintains a certain rating; (c) changes reporting requirements for insurers concerning commercial insurance; and (d) repeals a provision that requires an insurer that insures a public entity as an exempt commercial policyholder to maintain a certain rating. (3) Requires a foreign or alien insurance company that**

provides certain surety bonds to appoint the commissioner of the department of insurance as the company's agent for service of process in certain actions. (4) Amends the definition of "annuity contract" for purposes of the Indiana life and health guaranty association law. (5) Allows certain members of the political subdivision catastrophic liability fund to withdraw from the fund and receive a rebate of part of the member's previous assessments.)

Effective: Upon passage; July 1, 2006.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1392 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 21-10-2-1, AS ADDED BY HEA 1006-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. A school corporation individually, in collaboration with other school corporations, and through the educational services centers may undertake action to reduce noninstructional expenditures and allocate the resulting savings to student instruction and learning. Actions taken under this section include the following:

(1) Pooling of resources with other school corporations for liability insurance, property and casualty insurance, worker's compensation insurance, employee health insurance, vision insurance, dental insurance, or other insurance, whether by pooling risks for coverage or for the purchase of coverage, or by the creation of or participation in insurance ~~programs,~~ **trusts,** subject to the following:

(A) School corporations that elect to pool ~~property and casualty risks~~ **assets** for ~~insurance~~ coverage ~~are~~ **must create a trust under Indiana law for the assets. The trust is** subject to regulation by the department of insurance as follows:

(i) The ~~program~~ **trust** must ~~register~~ **be registered** with the

department of insurance.

(ii) The ~~program~~ **trust** shall obtain ~~both specific and aggregate levels of~~ **stop loss** insurance issued by an insurer authorized to do business in Indiana ~~each~~ with ~~a~~ **an aggregate** retention ~~level~~ of ~~an amount approved by the department of insurance.~~ **not more than one hundred twenty-five percent (125%) of the amount of expected claims for the following year.**

(iii) Contributions by the school corporations must be set at ~~a level approved by the department of insurance.~~ **one hundred percent (100%) of the aggregate retention plus all other costs of the trust.**

(iv) ~~Each program~~ **The trust** shall ~~submit an actuarial study of a type and nature~~ **maintain a fidelity bond in an amount** approved by the department of insurance. The ~~program shall pay the costs of the actuarial study. Each program shall fund one hundred percent (100%) of the actuarial study's projection for annual losses, plus the fixed costs of the program.~~ **fidelity bond must cover each person responsible for the trust for acts of fraud or dishonestly in servicing the trust.**

(v) The ~~program~~ **trust** is subject to IC 27-4-1-4.5 regarding claims settlement practices.

(vi) The ~~program~~ **trust** shall file an annual financial statement in the form required by ~~the department of insurance~~ **IC 27-1-3-13** not later than ~~one hundred twenty (120) days after the end of the program's fiscal~~ **March 1 of each** year.

(vii) The ~~program~~ **trust** is not covered by the Indiana insurance guaranty fund created under IC 27-6-8. **The liability of each school corporation is joint and several.**

(viii) The ~~program~~ **trust** is subject to examination by the department of insurance. All costs associated with an examination shall be borne by the ~~program.~~ **trust.**

(ix) The department of insurance may deny, suspend, or revoke the registration of a ~~program~~ **trust** if the commissioner finds that the ~~program~~ **trust** is in a hazardous financial condition, the ~~program~~ **trust** refuses to be examined or produce records for examination, or the ~~program~~ **trust** has failed to pay a final judgment rendered against the trust by a court within thirty (30) days.

(B) The department of insurance may adopt rules under IC 4-22-2 to implement this subdivision.

(2) Each school corporation, and more than one (1) school corporation acting jointly, may elect to aggregate purchases of natural gas commodity supply from any available natural gas commodity seller for all schools included in the aggregated purchases. A rate schedule that is:

(A) filed by a natural gas utility; and

(B) approved by the Indiana utility regulatory commission;

must include provisions that allow a school corporation or school corporations acting jointly to elect to make aggregated purchases of

natural gas commodity supply. Upon request from a school corporation, a natural gas utility shall summarize the rates and charges for providing services to each school in the school corporation on one (1) summary bill for remitting payment to the utility.

(3) Consolidating purchases with other school corporations or units of government of the following:

(A) School buses and other vehicles and vehicle fleets.

(B) Fuel, maintenance, or other services for vehicles or vehicle fleets.

(C) Food services.

(D) Facilities management services.

(E) Transportation management services.

(F) Textbooks, technology, and other school materials and supplies.

(G) Any other purchases a school corporation may require.

Purchases may be made by contiguous school corporations, as part of regional consolidated purchasing arrangements, or from consolidated sources under multistate cooperative bidding arrangements.

SECTION 2. IC 27-1-12.7-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. Notwithstanding any other provision of law:

(1) the commissioner has the sole authority to regulate the issuance and sale of funding agreements;

(2) a funding agreement is not considered a covered policy under IC 27-8-8-1(a) **or IC 27-8-8-2.3(d);** and

(3) a claim for payments under a funding agreement must be treated as a loss claim described in Class 2 of IC 27-9-3-40.

SECTION 3. IC 27-1-15.6-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 22. ~~(a)~~ An insurance producer may not receive compensation for the sale, solicitation, negotiation, or renewal of any insurance policy issued to any person or entity for whom the insurance producer, for a fee, acts as a consultant for that policy unless:

(1) the insurance producer provides to the insured a written agreement in accordance with section 23(c) of this chapter; and

(2) the insurance producer discloses to the insured the following information prior to the sale, solicitation, negotiation, or renewal of any policy:

(A) The fact that the insurance producer will receive compensation for the sale of the policy.

(B) The method of compensation.

~~(b) The requirements of this subsection are in addition to the requirements set forth in subsection (a). A risk manager described in IC 27-1-22-2.5(b)(2) shall, before providing risk management services to an exempt commercial policyholder (as defined in IC 27-1-22-2.5), disclose in writing to the exempt commercial policyholder whether the risk manager will receive or expects to receive any commission, fee, or~~

~~other consideration from an insurer in connection with the purchase of a commercial insurance policy by the exempt commercial policyholder. However, if the risk manager charges the exempt commercial policyholder a fee for risk management services, the risk manager shall disclose in writing to the exempt commercial policyholder the specific amount of any commission, fee, or other consideration that the risk manager may receive from an insurer in connection with the purchase of the policy. The risk manager shall, before providing the risk management services, obtain from the exempt commercial policyholder a written acknowledgment of the disclosures made by the risk manager to the exempt commercial policyholder under this subsection.~~

SECTION 4. IC 27-1-15.6-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 23. (a) An individual or corporation shall not engage in the business of an insurance consultant until a consultant license has been issued to the individual or corporation by the commissioner. However, a consultant license is not required for the following:

(1) An attorney licensed to practice law in Indiana acting in the attorney's professional capacity.

(2) A duly licensed insurance producer or surplus lines producer.

(3) A trust officer of a bank acting in the normal course of the trust officer's employment.

(4) An actuary or a certified public accountant who provides information, recommendations, advice, or services in the actuary's or certified public accountant's professional capacity.

(b) An application for a license to act as an insurance consultant shall be made to the commissioner on forms prescribed by the commissioner. An applicant may limit the scope of the applicant's consulting services by stating the limitation in the application. The areas of allowable consulting services are:

(1) Class 1, consulting regarding the kinds of insurance specified in IC 27-1-5-1, Class 1; and

(2) Class 2 and Class 3, consulting regarding the kinds of insurance specified in IC 27-1-5-1, Class 2 and Class 3.

Within a reasonable time after receipt of a properly completed application form, the commissioner shall hold a written examination for the applicant that is limited to the type of consulting services designated by the applicant, and may conduct investigations and propound interrogatories concerning the applicant's qualifications, residence, business affiliations, and any other matter that the commissioner considers necessary or advisable in order to determine compliance with this chapter or for the protection of the public.

(c) For purposes of this subsection, "consultant's fee" does not include a late fee charged under section 24 of this chapter or fees otherwise allowed by law. A consultant shall provide consultant services as outlined in a written agreement. The agreement must be signed by the person receiving services, and a copy of the agreement must be provided to the person receiving services before any services are performed. The agreement must outline the nature of the work to be performed by the

consultant and the method of compensation of the consultant. The signed agreement must be retained by the consultant for not less than two (2) years after completion of the services. A copy of the agreement shall be made available to the commissioner. In the absence of an agreement on the consultant's fee, the consultant shall not be entitled to recover a fee in any action at law or in equity.

(d) An individual or corporation shall not concurrently hold a consultant license and an insurance producer's license, surplus lines producer's license, or limited lines producer's license at any time.

(e) A licensed consultant shall not:

(1) employ;

(2) be employed by;

(3) be in partnership with; or

(4) receive any remuneration whatsoever;

from a licensed insurance producer, surplus lines producer, or limited lines producer or insurer, except that a consultant may be compensated by an insurer for providing consulting services to the insurer.

(f) A consultant license shall be valid for not longer than twenty-four (24) months and may be renewed and extended in the same manner as an insurance producer's license. The commissioner shall designate on the license the consulting services that the licensee is entitled to perform.

(g) All requirements and standards relating to the denial, revocation, or suspension of an insurance producer's license, including penalties, apply to the denial, revocation, and suspension of a consultant license as nearly as practicable.

(h) A consultant is obligated under the consultant's license to:

(1) serve with objectivity and complete loyalty solely the insurance interests of the consultant's client; and

(2) render the client such information, counsel, and service as within the knowledge, understanding, and opinion, in good faith of the licensee, best serves the client's insurance needs and interests.

(i) ~~Except as provided in subsection (j),~~ The form of a written agreement required by subsection (c) must be filed with the commissioner not less than thirty (30) days before the form is used. If the commissioner does not expressly approve or disapprove the form within thirty (30) days after filing, the form is considered approved. At any time after notice and for cause shown, the commissioner may withdraw approval of a form effective thirty (30) days after the commissioner issues notice that the approval is withdrawn.

~~(j) Subsection (i) does not apply to the form of a written agreement under subsection (c) that is executed by an insurance producer and an exempt commercial policyholder (as defined in IC 27-1-22-2.5).~~

SECTION 5. IC 27-1-17-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. Whenever a foreign or an alien insurance company desires to be admitted to do an insurance business in this state, it shall execute in the English language and present the following to the department, at its office, accompanied by the fees prescribed by law:

~~(a)~~ **(1)** A copy of its articles of incorporation or association, with all amendments thereto, duly authenticated by the proper officer of the state, country, province, or government wherein it is incorporated or organized, or the state in which it is domiciled in the United States.

~~(b)~~ **(2)** An application for admission, executed in the manner provided in this chapter, setting forth:

~~(1)~~ **(A)** the name of such company;

~~(2)~~ **(B)** the location of its principal office or place of business without this state;

~~(3)~~ **(C)** the names of the states in which it has been admitted or qualified to do business;

~~(4)~~ **(D)** the character of insurance business under its articles of incorporation or association which it intends to transact in this state, which must conform to the class or classes set forth in the provisions of IC 27-1-5-1;

~~(5)~~ **(E)** the total authorized capital stock of the company and the amount thereof issued and outstanding, and the surplus required of such company by the laws of the state, country, province, or government under which it is organized, or the state in which it is domiciled in the United States, if a stock company, which shall equal at least the requirements set forth in section 5(a) of this chapter;

~~(6)~~ **(F)** the total amount of assets and the surplus of assets over all its liabilities, if other than a stock company, which shall equal at least the requirements set forth in section 5(b) of this chapter;

~~(7)~~ **(G)** if an alien company, the surplus of assets invested according to the laws of the state in the United States where it has its deposit, which shall equal at least the requirements set forth in section 5(c) of this chapter; and

~~(8)~~ **(H)** such further and additional information as the department may from time to time require.

The application shall be signed in duplicate, in the form prescribed by the department, by the president or a vice president and the secretary or an assistant secretary of the corporation, and verified under oath by the officers signing the same.

~~(c)~~ **(3)** A statement of its financial condition and business, in the form prescribed by law for annual statements, signed and sworn to by the president or secretary or other principal officers of the company; provided, however, that an alien company shall also furnish a separate statement comprising only its condition and business in the United States, which shall be signed and sworn to by its United States manager.

~~(d)~~ **(4)** A copy of the last report of examination certified to by the insurance commissioner or other proper supervisory official of the state in which such company is domiciled; provided, however, that the commissioner may cause an examination to be made of the condition and affairs of such company before authority to transact business in this state is given.

~~(e)~~ **(5)** A certificate from the proper official of the state, country, province, or government wherein it is incorporated or organized, or the state in which it is domiciled in the United States, that it is duly organized or incorporated under those laws and authorized to make the kind or kinds of insurance which it proposes to make in this state.

~~(f)~~ **(6)** A copy of its bylaws or regulations, if any, certified to by the secretary or similar officer of the insurance company.

~~(g)~~ **(7)** A duly executed power of attorney in a form prescribed by the department which constitutes and appoints an individual or a corporate resident of Indiana, or an authorized Indiana insurer, as the insurance company's agent, its true and lawful attorney upon whom, **except as provided in section 4.2 of this chapter,** all lawful processes in any action in law or in equity against it shall be served. Such power of attorney shall contain an agreement by the insurance company that any lawful process against it which may be served upon the agent as its attorney shall be of the same force and validity as if served upon the insurance company and that such power of attorney shall continue in force and be irrevocable so long as any liability of the insurance company remains outstanding in this state. Such power of attorney shall be executed by the president and secretary of the insurance company or other duly authorized officers under its seal and shall be accompanied by a certified copy of the resolution of the board of directors of the company making said appointment and authorizing the execution of said power of attorney. Service of any lawful process shall be by delivering to and leaving with the agent two (2) copies of such process, with copy of the pertinent complaint attached. The agent shall forthwith transmit to the defendant company at its last known principal place of business by registered or certified mail, return receipt requested, one (1) of the copies of such process, with complaint attached, the other copy to be retained in a record which shall show all process served upon and transmitted by him. Such service shall be sufficient provided the returned receipt or, if the defendant company shall refuse to accept such mailing, the registered mail together with an affidavit of plaintiff or his attorney stating that service was made upon the agent and forwarded as above set forth but that such mail was returned by the post office department is filed with the court. The agent shall make information and receipts available to plaintiff, defendant or their attorneys. No plaintiff or complainant shall be entitled to a judgment by default based on service authorized by this section until the expiration of at least thirty (30) days from the date on which either the post office receipt or the unclaimed mail together with affidavit is filed with the court. Nothing in this section shall limit or abridge the right to serve any process, notice or demand upon any company in any other manner permitted by law.

~~(h)~~ **(8)** Proof which satisfies the department that it has complied with the financial requirements imposed in this chapter upon

foreign and alien insurance companies which transact business in this state and that it is entitled to public confidence and that its admission to transact business in this state will not be prejudicial to public interest.

SECTION 6. IC 27-1-17-4.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 4.2. (a) A foreign or alien insurance company that provides a surety bond that is required or permitted under the law of the United States shall execute a power of attorney in a form prescribed by the department irrevocably appointing the commissioner as the insurance company's agent for service of process in an action on the surety bond if the:**

(1) surety bond was provided in Indiana; and

(2) service of process under this section is in addition to another method of service of process authorized by law or court rule.

(b) Service of process under this section has the same effect as personal service on the insurance company.

(c) Upon receipt of process described in this section, the commissioner shall forward the process to the resident agent designated by the insurance company under section 4(7) of this chapter.

(d) The commissioner may adopt rules under IC 4-22-2 to establish reasonable fees for the acceptance of process described in this section. Fees collected under rules adopted under this subsection must be deposited in the department of insurance fund established by IC 27-1-3-28.

SECTION 7. IC 27-1-22-2.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2.5. ~~(a)~~ As used in this chapter, ~~"exempt~~ "commercial policyholder" means ~~an~~ **a business, nonprofit, or governmental** entity that **purchases a**

~~(1) makes written certification to the entity's insurer on a form prescribed by the department that the entity is an exempt commercial policyholder;~~

~~(2) has purchased the~~ policy of **commercial** insurance through an insurance producer licensed under IC 27-1-15.6 or IC 27-1-15.8. ~~and~~

~~(3) meets any three (3) of the following criteria:~~

~~(A) Has a net worth of more than twenty-five million dollars ($25,000,000) at the time the policy of insurance is issued.~~

~~(B) Has a net revenue or sales of more than fifty million dollars ($50,000,000) in the preceding fiscal year.~~

~~(C) Has more than twenty-five (25) employees per individual company or fifty (50) employees per holding company aggregate at the time the policy of insurance is issued.~~

~~(D) Has aggregate annual commercial insurance premiums, excluding any worker's compensation and professional liability insurance premiums, of more than seventy-five thousand dollars ($75,000) in the preceding fiscal year.~~

~~(E) Is a nonprofit or a public entity with an annual budget of at least twenty-five million dollars ($25,000,000) or assets of at least twenty-five million dollars ($25,000,000) in the preceding fiscal year.~~

~~(F) Procures commercial insurance with the services of a risk manager.~~

~~An entity meets the written certification requirement under subdivision (1) if the entity provides a copy of a certification previously submitted under subdivision (1) and if there has been no significant material change in the entity's status.~~

~~(b) As used in this chapter, "risk manager" means a person qualified to assess an exempt commercial policyholder's insurance needs and analyze and negotiate a policy of insurance on behalf of an exempt commercial policyholder. A risk manager may be:~~

~~(1) a full-time employee of an exempt commercial policyholder who is qualified through education and experience or training and experience; or~~

~~(2) a person retained by an exempt commercial policyholder who holds a professional designation relevant to the type of insurance to be purchased by the exempt commercial policyholder.~~

SECTION 8. IC 27-1-22-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) Every insurer shall file with the commissioner every manual of classifications, rules, and rates, every rating schedule, every rating plan, and every modification of any of the foregoing which it proposes to use.

(b) The following types of insurance are exempt from the requirements of subsections (a) and (j):

(1) Inland marine risks, which by general custom of the business are not written according to manual rates or rating plans.

(2) Insurance, other than workers compensation insurance, ~~or professional liability insurance,~~ **that is:**

(A) written by an insurer that:

(i) complies with subsection (m); and

(ii) maintains at least a B rating by A.M. Best or an equivalent rating by another independent insurance rating organization; and

(B) issued to ~~exempt~~ commercial policyholders.

(c) Every such filing shall indicate the character and extent of the coverage contemplated and shall be accompanied by the information upon which the filer supports such filing.

(d) The information furnished in support of a filing may include:

(1) the experience and judgment of the insurer or rating organization making the filing;

(2) its interpretation of any statistical data it relies upon;

(3) the experience of other insurers or rating organizations; or

(4) any other relevant factors.

The commissioner shall have the right to request any additional relevant information. A filing and any supporting information shall be open to public inspection as soon as stamped "filed" within a reasonable time

after receipt by the commissioner, and copies may be obtained by any person on request and upon payment of a reasonable charge therefor.

(e) Filings shall become effective upon the date of filing by delivery or upon date of mailing by registered mail to the commissioner, or on a later date specified in the filing.

(f) Specific inland marine rates on risks specially rated, made by a rating organization, shall be filed with the commissioner.

(g) Any insurer may satisfy its obligation to make any such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings and by authorizing the commissioner to accept such filings on its behalf, provided that nothing contained in this chapter shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization or as requiring any member or subscriber to authorize the commissioner to accept such filings on its behalf.

(h) Every insurer which is a member of or a subscriber to a rating organization shall be deemed to have authorized the commissioner to accept on its behalf all filings made by the rating organization which are within the scope of its membership or subscribership, provided:

(1) that any subscriber may withdraw or terminate such authorization, either generally or for individual filings, by written notice to the commissioner and to the rating organization and may then make its own independent filings for any kinds of insurance, or subdivisions, or classes of risks, or parts or combinations of any of the foregoing, with respect to which it has withdrawn or terminated such authorization, or may request the rating organization, within its discretion, to make any such filing on an agency basis solely on behalf of the requesting subscriber; and

(2) that any member may proceed in the same manner as a subscriber unless the rating organization shall have adopted a rule, with the approval of the commissioner:

(A) requiring a member, before making an independent filing, first to request the rating organization to make such filing on its behalf and requiring the rating organization, within thirty (30) days after receipt of such request, either:

(i) to make such filing as a rating organization filing;

(ii) to make such filing on an agency basis solely on behalf of the requesting member; or

(iii) to decline the request of such member; and

(B) excluding from membership any insurer which elects to make any filing wholly independently of the rating organization.

(i) Under such rules as the commissioner shall adopt, the commissioner may, by written order, suspend or modify the requirement of filing as to any kinds of insurance, or subdivision, or classes of risk, or parts or combinations of any of the foregoing, the rates for which can not practicably be filed before they are used. Such orders and rules shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as the commissioner may deem advisable to ascertain whether any rates affected by such

order are excessive, inadequate, or unfairly discriminatory.

(j) Upon the written application of the insured, stating the insured's reasons therefor, filed with the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

(k) An insurer shall not make or issue a policy or contract except in accordance with filings which are in effect for that insurer or in accordance with the provisions of this chapter. Subject to the provisions of section 6 of this chapter, any rates, rating plans, rules, classifications, or systems in effect on May 31, 1967, shall be continued in effect until withdrawn by the insurer or rating organization which filed them.

(l) The commissioner shall have the right to make an investigation and to examine the pertinent files and records of any insurer, insurance producer, or insured in order to ascertain compliance with any filing for rate or coverage which is in effect. The commissioner shall have the right to set up procedures necessary to eliminate noncompliance, whether on an individual policy, or because of a system of applying charges or discounts which results in failure to comply with such filing.

~~(m) The department may adopt rules to:~~

~~(1) implement the exemption under subsection (b);~~

~~(2) impose disclosure requirements the commissioner determines are necessary to adequately protect exempt commercial policyholders; and~~

~~(3) establish the form of the report required by subsection (n).~~

~~(n) Each insurer who issues insurance to an exempt commercial policyholder shall file an annual report with the department by February 1 of each year. The annual report may not disclose the identity of an exempt commercial policyholder and must include only the following information regarding each exempt commercial policyholder:~~

~~(1) The account number, policy number, or other number used by the insurer to identify the insured.~~

~~(2) The amount of aggregate annual commercial premium.~~

~~(3) The inception date and expiration date of commercial insurance coverage provided by the insurer.~~

~~(4) The criteria in section 2.5(a)(3) of this chapter used to establish the entity as an exempt commercial policyholder.~~

~~(o) The annual report filed under subsection (n) must be accompanied by the fee prescribed by IC 27-1-3-15(e). For purposes of calculating the required fee, each policy purchased by an exempt commercial policyholder shall be considered a product filing under IC 27-1-3-15(e).~~

(m) This subsection applies to an insurer that issues a commercial property or commercial casualty insurance policy to a commercial policyholder. Not more than thirty (30) days after the insurer begins using a commercial property or commercial casualty insurance:

(1) rate;

(2) rating plan;

(3) manual of classifications; or

(4) modification of an item specified in subdivision (1), (2), or

(3);

the insurer shall file with the department, for informational purposes only, the item specified in subdivision (1), (2), (3), or (4). Use of an item specified in subdivision (1), (2), (3), or (4) is not conditioned on review or approval by the department. This subsection does not require filing of an individual policy rate if the original manuals, rates, and rules for the insurance plan or program to which the individual policy conforms has been filed with the department.

(n) Subsection (m) does not apply to policy forms.

SECTION 9. IC 27-8-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) ~~As used in~~ **The definitions in this section apply throughout** this chapter.

(b) "Account" means one **(1)** of the ~~three (3)~~ **two (2)** accounts created under section 3 of this chapter.

(c) "Annuity contract", except as provided in section 2.3(e) of this chapter, includes:

(1) a guaranteed investment contract;

(2) a deposit administration contract;

(3) a structured settlement annuity;

(4) an annuity issued to or in connection with a government lottery; and

(5) an immediate or a deferred annuity contract.

(d) "Assessment base year" means, for an impaired insurer or insolvent insurer, the most recent calendar year for which required premium information is available preceding the calendar year during which the impaired insurer's or insolvent insurer's coverage date occurs.

(e) "Association", **except when the context otherwise requires,** means the Indiana life and health insurance guaranty association created ~~under~~ **by** section 3 of this chapter.

(f) "Benefit plan" means a specific plan, fund, or program that is established or maintained by an employer or an employee organization, or both, that:

(1) provides retirement income to employees; or

(2) results in a deferral of income by employees for a period extending to or beyond the termination of employment.

(g) "Board" refers to the board of directors of the association selected under IC 27-8-8-4.

(h) "Called", when used in the context of assessments, means that notice has been issued by the association to member insurers requiring the member insurers to pay, within a time frame set forth in the notice, an assessment that has been authorized by the board.

(i) "Commissioner" refers to the **insurance** commissioner ~~of insurance~~ **appointed under IC 27-1-1-2.**

(j) "Contractual obligation" means an **enforceable** obligation under **a** covered ~~policies.~~ **policy for which and to the extent that coverage is provided under section 2.3 of this chapter.**

(k) "Coverage date" means, with respect to a member insurer,

the date on which the earlier of the following occurs:

(1) The member insurer becomes an insolvent insurer.

(2) The association determines that the association will provide coverage under section 5(a) of this chapter with respect to the member insurer.

(l) "Covered policy" means ~~any~~ **a:**

(1) nongroup policy or contract; ~~that is of a type described in section 1(a) of this chapter and is not excluded by section 1(b) of this chapter.~~

(2) certificate under a group policy or contract; or

(3) part of a policy, contract, or certificate described in subdivisions (1) and (2);

for which coverage is provided under section 2.3 of this chapter.

(m) "Extracontractual claims" includes claims that relate to bad faith in the payment of claims, punitive or exemplary damages, or attorney's fees and costs.

(n) "Funding agreement" has the meaning set forth in IC 27-1-12.7-1.

(o) "Impaired insurer" means a member insurer ~~deemed by the commissioner to be potentially unable to fulfill its contractual obligations.~~ **that is:**

(1) not an insolvent insurer; and

(2) placed under an order of rehabilitation or conservation by a court with jurisdiction.

(p) "Insolvent insurer" means a member insurer ~~who becomes insolvent and~~ **that** is placed under ~~a final~~ **an** order of liquidation ~~rehabilitation, or conservation~~ **with a finding of insolvency** by a court **with jurisdiction.**

(q) "Member insurer" means any person that ~~is licensed or~~ holds a certificate of authority to transact in Indiana any kind of insurance for which coverage is provided under **section 2.3 of** this chapter. The term includes ~~any~~ **an** insurer whose ~~license or~~ certificate of authority to transact such insurance in Indiana may have been suspended, revoked, not renewed, or voluntarily withdrawn but does not include the following:

(1) A **for-profit or nonprofit hospital or** medical ~~and hospital~~ service organization.

(2) A health maintenance organization under IC 27-13.

(3) A fraternal benefit society under IC 27-11.

(4) The Indiana Comprehensive Health Insurance Association or any other mandatory state pooling plan or arrangement.

(5) An assessment company or ~~any other~~ **another** person that operates **on** an assessment plan (as defined in IC 27-1-2-3(y)).

(6) An interinsurance **or reciprocal** exchange authorized by IC 27-6-6.

(7) A prepaid limited ~~health~~ service **health maintenance** organization or a limited service health maintenance organization under IC 27-13-34.

~~(8) A special service health care delivery plan under IC 27-8-7.~~

~~(9)~~ **(8)** A farm mutual insurance company under IC 27-5.1.

(9) A person operating as a Lloyds under IC 27-7-1.

(10) The political subdivision risk management fund established by IC 27-1-29-10 and the political subdivision catastrophic liability fund established by IC 27-1-29.1-7.

(11) The small employer health reinsurance board established by IC 27-8-15.5-5.

~~(10) Any~~ **(12) A** person similar to any person described in subdivisions (1) through ~~(9).~~ **(11).**

(r) "Moody's Corporate Bond Yield Average" means:

(1) the monthly average of the composite yield on seasoned corporate bonds as published by Moody's Investors Service, Inc.; or

(2) if the monthly average described in subdivision (1) is no longer published, an alternative publication of interest rates or yields determined appropriate by the association.

(s) "Multiple employer welfare arrangement" has the meaning set forth in IC 27-1-34-1.

(t) "Owner" means the person:

(1) identified as the legal owner of a policy or contract according to the terms of the policy or contract; or

(2) otherwise vested with legal title to a policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer.

The term does not include a person with a mere beneficial interest in a policy or contract.

(u) "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a governmental entity, a voluntary organization, a trust, a trustee, or another business entity or organization.

(v) "Plan sponsor" refers to only one (1) of the following with respect to a benefit plan:

(1) The employer, in the case of a benefit plan established or maintained by a single employer.

(2) The holding company or controlling affiliate, in the case of a benefit plan established or maintained by affiliated companies comprising a consolidated corporation.

(3) The employee organization, in the case of a benefit plan established or maintained by an employee organization.

(4) In a case of a benefit plan established or maintained:

(A) by two (2) or more employers;

(B) by two (2) or more employee organizations; or

(C) jointly by one (1) or more employers and one (1) or more employee organizations;

and that is not of a type described in subdivision (2), the association, committee, joint board of trustees, or other similar group of representatives of the parties that establish or maintain the benefit plan.

(w) "Premiums" means ~~direct gross insurance premiums and annuity~~ **amounts, deposits, and** considerations received on covered policies, less ~~return~~ **returned** premiums, **returned deposits,** ~~and~~ **returned** considerations, ~~and~~ dividends, ~~paid or credited to policyholders on direct business. It~~ **and experience credits. The term** does not include ~~premiums~~ **the following:**

(1) Amounts, deposits, and considerations ~~on contracts between insurers and reinsurers. For purposes of assessments made under section 6 of this chapter, "premiums" for covered policies shall not be reduced on account of any limitation on benefits for which the association is obligated under section 5(1) of this chapter. However, "premiums" for assessment purposes does not include that portion of any premium exceeding~~ **received for policies or contracts or parts of policies or contracts for which coverage is not provided under section 2.3(d) of this chapter, as qualified by section 2.3(e) of this chapter, except that an assessable premium must not be reduced on account of the limitations set forth in section 2.3(e)(3), 2.3(e)(15), or 2.3(f)(2) of this chapter.**

(2) Premiums in excess of five million dollars ($5,000,000) ~~for any one (1)~~ **on an** unallocated annuity contract **not issued or not connected with a governmental benefit plan established under Section 401, 403(b), or 457 of the United States Internal Revenue Code.**

~~"Person" means any natural person, corporation, limited liability company, partnership, association, voluntary organization, trust, governmental organization or entity, or other business organization or entity.~~

(x) "Principal place of business" refers to the single state in which individuals who establish policy for the direction, control, and coordination of the operations of an entity as a whole primarily exercise the direction, control, and coordination, as determined by the association in the association's reasonable judgment by considering the following factors:

(1) The state in which the primary executive and administrative headquarters of the entity is located.

(2) The state in which the principal office of the chief executive officer of the entity is located.

(3) The state in which the board of directors or similar governing person of the entity conducts the majority of the board of directors' or governing person's meetings.

(4) The state in which the executive or management committee of the board of directors or similar governing person of the entity conducts the majority of the committee's meetings.

(5) The state from which the management of the overall operations of the entity is directed.

However, in the case of a plan sponsor, if more than fifty percent (50%) of the participants in the plan sponsor's benefit plan are employed in a single state, that state is considered to be the principal place of business of the plan sponsor. The principal place

of business of a plan sponsor of a benefit plan described in subsection (v)(4), if more than fifty percent (50%) of the participants in the plan sponsor's benefit plan are not employed in a single state, is considered to be the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties that establish or maintain the benefit plan and, in the absence of a specific or clear designation of a principal place of business, is considered to be the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question on the coverage date.

(y) "Receivership court" refers to the court in an insolvent insurer's or impaired insurer's state that has jurisdiction over the conservation, rehabilitation, or liquidation of the insolvent insurer or impaired insurer.

(z) "Resident" means ~~any~~ **a** person ~~who~~ **that** resides **or has the person's principal place of business** in Indiana ~~at the time the association becomes obligated for an impaired or insolvent insurer. Persons other than natural persons are considered to reside in the state where their principal place of business is located.~~ **on the applicable coverage date.**

(aa) "State" includes a state, the District of Columbia, Puerto Rico, and a United States possession, territory, or protectorate.

(bb) "Structured settlement annuity" means an annuity purchased to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.

(cc) "Supplemental contract" means a written agreement entered into for the distribution of proceeds under a life, health, or annuity policy or contract.

(dd) "Unallocated annuity contract" means an annuity contract or group annuity certificate: ~~that is not issued to and held by a natural person (excluding a natural person acting as a trustee),~~

(1) the owner of which is not a natural person; and

(2) that does not identify at least one (1) specific natural person as an annuitant;

except to the extent of any annuity benefits guaranteed to a natural person by an insurer under the contract or certificate. For ~~the~~ purposes of ~~section 1.5 of~~ this chapter, an unallocated annuity contract shall not be considered a group ~~covered~~ policy **or group contract.**

~~(b) For purposes of this chapter, a policy, contract, or certificate is considered to be held by the person identified on the policy, contract, or certificate as the holder or owner of the policy, contract, or certificate.~~

SECTION 10. IC 27-8-8-2.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 2.1. (a) For purposes of this chapter:**

(1) a policy or contract issued on a blanket basis is a group policy or group contract;

(2) each individual insured under a policy or contract issued on

a blanket basis is a certificate holder under the policy or contract; and

(3) a policy or contract issued on a franchise plan to members of a qualified group is a nongroup policy or nongroup contract.

(b) For purposes of this chapter, a benefit plan may have only one (1) plan sponsor.

SECTION 11. IC 27-8-8-2.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 2.3. (a) Except as otherwise excluded or limited by this chapter, this chapter provides coverage for policies and contracts specified in subsection (d) as follows:**

(1) To a person, other than a certificate holder under a group policy or a group contract, that, regardless of where the person resides, is the beneficiary, nonowner assignee, or payee of a person covered under subdivision (2).

(2) To a person that is a certificate holder under a group policy or group contract, and to a person that is the owner of a nongroup policy or nongroup contract that is not an unallocated annuity contract or a structured settlement annuity, and that:

(A) is a resident; or

(B) is not a resident if all the following conditions are satisfied:

(i) The member insurer that issued the policy or contract is domiciled in Indiana.

(ii) The state in which the person resides has an association similar to the association.

(iii) The nonresident is not eligible for coverage by the other association referred to in item (ii) solely because the member insurer was not licensed in the state of residence at the time specified in the guaranty association law of the state of residence.

(3) For an unallocated annuity contract, subdivisions (1) and (2) do not apply, and this chapter provides coverage to the following:

(A) A person that is the owner of the unallocated annuity contract, if the contract was issued to or in connection with a benefit plan whose plan sponsor is a resident or, if the plan sponsor is not a resident, if all the following conditions are satisfied:

(i) The member insurer that issued the unallocated annuity contract is domiciled in Indiana.

(ii) The state in which the plan sponsor resides has an association similar to the association.

(iii) The other association referred to in item (ii) does not provide coverage of the unallocated annuity contract solely because the member insurer was not licensed in the state of residence at the time specified in the guaranty association law of the state of residence.

(B) A person that is the owner of an unallocated annuity contract issued to or in connection with a government lottery, if the owner is a resident or, if the owner is not a resident, if all the following conditions are satisfied:

(i) The member insurer that issued the unallocated annuity contract is domiciled in Indiana.

(ii) The state in which the owner resides has an association similar to the association.

(iii) The other association referred to in item (ii) does not provide coverage of the unallocated annuity contract solely because the member insurer was not licensed in the state of residence at the time specified in the guaranty association law of the state of residence.

(4) For a structured settlement annuity, subdivisions (1) and (2) do not apply, and this chapter provides coverage to a person that is a payee under the structured settlement annuity (or beneficiary of a payee if the payee is deceased), if the payee:

(A) is a resident, regardless of where the contract owner resides; or

(B) is not a resident if all the following conditions are satisfied:

(i) The member insurer that issued the structured settlement annuity is domiciled in Indiana.

(ii) The state in which the payee resides has an association similar to the association.

(iii) Neither the payee nor the beneficiary of the payee (if the payee is deceased) is eligible for coverage by the other association referred to in item (ii) solely because the member insurer was not licensed in the state of residence at the time specified in the guaranty association law of the state of residence.

(b) This chapter does not provide coverage to a person that is:

(1) a payee or beneficiary of a contract owner that is a resident, if the payee or beneficiary is afforded any coverage by the association of another state; or

(2) otherwise covered under subsection(a)(3), if any coverage is provided to the person by the association of another state.

(c) To avoid duplicate coverage, if a person that would otherwise receive coverage under this chapter is provided coverage under the laws of another state, the person is not eligible for coverage under this chapter. In determining the application of this subsection when a person may be covered by the association of more than one (1) state as an owner, a payee, a beneficiary, or an assignee, this chapter must be construed in conjunction with the laws of the other state to result in coverage by only one (1) association.

(d) Except as otherwise excluded or limited by this chapter, this chapter provides coverage to the persons specified in subsection (a) for:

(1) direct nongroup life, health, or annuity policies and contracts and supplemental contracts to direct nongroup life, health, or annuity policies and contracts;

(2) certificates under direct group life, health, and annuity policies and contracts; and

(3) unallocated annuity contracts;

issued by member insurers.

(e) This chapter does not provide coverage for or with respect to the following:

(1) A part of a certificate, policy, or contract:

(A) not guaranteed by the insurer; or

(B) under which the risk is borne by the payee, certificate holder, or the policy or contract owner.

(2) A reinsurance policy or contract, unless and to the extent that assumption certificates have been issued under the reinsurance policy or contract.

(3) A part of a certificate, policy, or contract to the extent that the certificate's, policy's, or contract's interest rate, crediting rate, or similar factor employed in calculating returns or changes in values, whether expressly stated in the certificate, policy, or contract or determined by use of an index or other external referent stated in the certificate, policy, or contract, either:

(A) when averaged over a period of four (4) years immediately before the applicable coverage date, exceeds the rate of interest determined by subtracting two (2) percentage points from Moody's Corporate Bond Yield Average averaged for the same four (4) year period or for a lesser period if the certificate, policy, or contract was issued less than four (4) years before the applicable coverage date; or

(B) in effect under the certificate, policy, or contract on and after the applicable coverage date, exceeds the rate of interest determined by subtracting three (3) percentage points from Moody's Corporate Bond Yield Average as most recently available on the applicable coverage date.

(4) The obligations of a plan or program of an employer, an association, or another person to provide life, health, or annuity benefits to the employer's, association's, or other person's employees, members, or others, including obligations arising under and benefits payable by the employer, association, or other person under a multiple employer welfare arrangement.

(5) A minimum premium group insurance plan.

(6) A stop-loss or excess loss insurance policy or contract providing for the indemnification of or payment to a policy owner, a contract owner, a plan, or another person obligated to pay life, health, or annuity benefits or to provide services in connection with a benefit plan or another plan, fund, or program for the provision of employee welfare or pension

benefits.

(7) An administrative services only contract.

(8) A part of a certificate, policy, or contract to the extent that the certificate, policy, or contract provides for:

(A) dividends or experience rating credits;

(B) voting rights; or

(C) payment of fees or allowances to a person, including the certificate holder or policy or contract owner, in connection with service with respect to or administration of the certificate, policy, or contract.

(9) A certificate, policy, or contract issued in Indiana by a member insurer when the member insurer did not have a certificate of authority to issue the certificate, policy, or contract in Indiana.

(10) An unallocated annuity contract issued to or in connection with a benefit plan protected by the federal Pension Benefit Guaranty Corporation, regardless of whether the federal Pension Benefit Guaranty Corporation has yet been required to make payments with respect to the benefit plan.

(11) An unallocated annuity contract or part of an unallocated annuity contract that is not issued to or in connection with a benefit plan or a government lottery.

(12) A certificate, policy, or contract or part of a certificate, policy, or contract with respect to which the Class B assessments contemplated by section 6 of this chapter may not be made or collected under federal or state law.

(13) An obligation or claim that does not arise under the express written terms of the policy or contract issued by the member insurer to the contract owner or policy owner, including any of the following obligations and claims:

(A) Obligations and claims based on marketing materials.

(B) Obligations and claims based on side letters, riders, or other documents issued by the member insurer without meeting applicable policy form filing or approval requirements.

(C) Obligations and claims based on actual or alleged misrepresentations.

(D) Obligations and claims that are extracontractual claims.

(E) Obligations and claims for penalties or consequential, incidental, punitive, or exemplary damages.

(14) An obligation to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the:

(A) benefit plan; or

(B) benefit plan's trustee;

that is not an affiliate of the member insurer.

(15) A part of a certificate, policy, or contract to the extent the:

(A) certificate, policy, or contract provides for the certificate's, policy's, or contract's interest rate, crediting

rate, or similar factor employed in calculating returns or changes in values, to be determined by use of an index or other external referent stated in the certificate, policy, or contract; and

(B) returns or changes in value have not been credited to the certificate, policy, or contract, or as to which the certificate holder's or policy or contract owner's rights are subject to forfeiture, as of the applicable coverage date.

If a certificate's, policy's, or contract's returns or changes in values are credited to the certificate, policy, or contract less frequently than annually, for purposes of determining the returns and values that have been credited and are not subject to forfeiture under this subdivision, the returns and changes in value determined by using the procedures defined in the certificate, policy, or contract must be considered credited as if the contractual date of crediting returns or changes in values were the applicable coverage date, and those credited returns or changes in value are not subject to forfeiture under this subdivision, but will be subject to any other applicable limitations under this chapter.

(16) A funding agreement.

(17) An annuity not subject to regulation as described in IC 27-1-12.4.

(f) The benefits that the association is obligated to cover do not exceed the lesser of the following:

(1) The contractual obligations for which the member insurer is liable or would have been liable if the member insurer were not an impaired insurer or insolvent insurer.

(2) The applicable limitations as follows:

(A) With respect to certificates, policies, and contracts not subject to clause (B), (C), (E), or (F), with respect to one (1) life, regardless of the number of policies or contracts, the following limitations:

(i) Three hundred thousand dollars ($300,000) in life insurance death benefits, but not more than one hundred thousand dollars ($100,000) in net cash surrender and net cash withdrawal values.

(ii) Three hundred thousand dollars ($300,000) in health insurance benefits, but not more than one hundred thousand dollars ($100,000) in net cash surrender and net cash withdrawal values.

(iii) One hundred thousand dollars ($100,000) in the present value of annuity benefits, including net cash surrender and net cash withdrawal values.

(B) With respect to unallocated annuity contracts issued to or in connection with a governmental benefit plan established under Section 401, 403(b), or 457 of the United States Internal Revenue Code, one hundred thousand dollars ($100,000) in the present value of annuity benefits, including

net cash surrender and net cash withdrawal values, per participant.

(C) With respect to structured settlement annuities, one hundred thousand dollars ($100,000) in the present value of annuity benefits, including net cash surrender and net cash withdrawal values, per payee.

(D) In addition to the foregoing limitations, the association is not obligated to cover more than:

(i) an aggregate of three hundred thousand dollars ($300,000) in benefits with respect to any one (1) person under clauses (A), (B), and (C); or

(ii) with respect to one (1) owner of multiple nongroup policies of life insurance, whether the policy owner is an individual, a firm, a corporation, or another person, and whether the persons insured are officers, managers, employees, or other persons, five million dollars ($5,000,000) in benefits, including net cash surrender and net cash withdrawal values, regardless of the number of policies and contracts held by the owner.

(E) With respect to unallocated annuity contracts issued to or in connection with a government lottery, five million dollars ($5,000,000) in benefits per contract owner, regardless of the number of contracts held by the contract owner.

(F) With respect to unallocated annuity contracts:

(i) issued to or in connection with a benefit plan; and

(ii) not subject to clause (B);

five million dollars ($5,000,000) in benefits per plan sponsor, regardless of the number of unallocated annuity contracts entitled to coverage under this chapter.

(g) The limitations set forth in subsection (f) are limitations on the benefits for which the association is obligated before taking into account the:

(1) association's subrogation and assignment rights; or

(2) extent to which the benefits could be provided out of the assets of the impaired insurer or insolvent insurer attributable to covered policies.

The costs of discharging the association's obligations under this chapter may be met by the use of assets attributable to covered policies or reimbursed to the association under the association's subrogation and assignment rights.

(h) In discharging the association's obligations to provide coverage under this chapter, the association is not required to:

(1) guarantee, assume, reinsure, or perform;

(2) cause to be guaranteed, assumed, reinsured, or performed; or

(3) otherwise assure the discharge of;

the obligations of the insolvent insurer or impaired insurer under a covered policy that do not materially affect the economic values

or economic benefits of the covered policy.

SECTION 12. IC 27-8-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) There is created a nonprofit legal entity referred to as the Indiana Life and Health Insurance Guaranty Association. **A member insurer shall be and remain a member of the association as a condition of the member insurer's authority** to transact insurance in Indiana. ~~an insurer must be a member of the association.~~ The association shall perform its functions under the plan of operation established ~~in~~ **and approved under** section 7 of this chapter. **The association shall exercise** its powers ~~are to be exercised~~ through a board of directors established under section 4 of this chapter. For purposes of administration and assessment the association shall maintain ~~three (3)~~ **the following two (2)** accounts:

(1) The health insurance account.

(2) The life insurance **and annuity** account, **which includes the following subaccounts:**

(A) The life insurance subaccount.

(B) The annuity subaccount, which includes annuity contracts issued to or in connection with a governmental benefit plan established under Section 401, 403(b), or 457 of the United States Internal Revenue Code, but otherwise excludes unallocated annuities.

(C) The unallocated annuity subaccount, which excludes annuity contracts issued to or in connection with a governmental benefit plan established under Section 401, 403(b), or 457 of the United States Internal Revenue Code.

~~(3) The annuity account.~~

(b) The association is under the immediate supervision of the commissioner and subject to ~~Indiana~~ **the applicable provisions of the** insurance ~~law. From the assessments specified in section 6 of this chapter, the association shall pay administrative costs and general expenses incurred by the commissioner in supervising the association and discharging the commissioner's obligations under this chapter.~~ **laws of Indiana.**

SECTION 13. IC 27-8-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) The board of directors of the association shall consist of not less than five (5) nor more than nine (9) member insurers **serving terms established in the plan of operation.** The members of the board shall be selected by member insurers subject to the approval of the commissioner.

(b) Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the commissioner.

~~(b)~~ **(c)** To select the initial board ~~of directors,~~ and initially organize the association, the commissioner shall give notice to all member insurers of the time and place of the organizational meeting. At the organizational meeting, each member insurer is entitled to one (1) vote in person or by proxy. If the board ~~of directors~~ is not selected within sixty (60) days after notice of the organizational meeting, the

commissioner may appoint the initial members **of the board.**

~~(c)~~ **(d)** In approving selections ~~or in appointing members~~ to the board, the commissioner shall consider whether all member insurers are fairly represented.

~~(d)~~ **(e)** Members of the board may be reimbursed from the assets of the association ~~only~~ for expenses incurred **by the members** as members of the board. ~~of directors.~~ **The association shall not otherwise compensate members of the board for the members' services on the board.**

SECTION 14. IC 27-8-8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) If a ~~domestic~~ **member** insurer is an impaired insurer, the association may, **in the association's sole discretion and** subject to any conditions imposed by the association ~~other than those~~ that **do not** impair the contractual obligations of the impaired insurer ~~and subject to the approval of the impaired insurer~~ and **that are approved by** the commissioner:

(1) guarantee, ~~or~~ **assume,** reinsure, **or perform,** or cause to be guaranteed, assumed, ~~or~~ reinsured, **or performed, the contractual obligations of** any of the covered policies of the impaired insurer **or otherwise assure the discharge of the contractual obligations of the covered policies of the impaired insurer; and**

(2) provide money, pledges, **loans,** notes, guarantees, or **use** other means as ~~are proper~~ **determined by the association in the association's sole discretion to be necessary or appropriate** to effectuate subdivision (1). ~~and assure payment of the contractual obligations of the impaired insurer pending action under subdivision (1); and~~

~~(3) loan money to the impaired insurer.~~

~~(b) If a domestic insurer is an insolvent insurer, the association shall, subject to the approval of the commissioner:~~

~~(1) guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured the covered policies of the insolvent insurer;~~

~~(2) assure payment of the contractual obligations of the insolvent insurer; and~~

~~(3) provide money, pledges, notes, guarantees, or other means as are necessary to discharge the contractual obligations of the insolvent insurer.~~

~~However, if the domestic insurer is subject to proceedings under IC 27-9-3 and the initial petition was filed after December 31, 1985, this subsection applies only to the covered policies of residents and nonresidents to whom coverage is provided under section 1.5(d) of this chapter and the contractual obligation of the insolvent insurer to residents and nonresidents to whom coverage is provided under section 1.5(d) of this chapter.~~

~~(c) If a foreign or alien insurer is an insolvent insurer, the association shall, subject to the approval of the commissioner:~~

~~(1) guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured the covered policies of residents to whom coverage is provided under section 1.5(d) of this chapter;~~

~~(2) assure payment of the contractual obligations of the insolvent insurer to residents to whom coverage is provided under section 1.5(d) of this chapter; and~~

~~(3) provide money, pledges, notes, guarantees, or other means as are necessary to discharge its duties.~~

~~The association may appear, intervene, assert objections, or take other action as is necessary and appropriate to protect the interests of Indiana residents to whom coverage is provided under section 1.5(d) of this chapter who are policyholders of the foreign or alien insurer, in any insolvency proceeding involving the foreign or alien insurer, whether the proceeding is inside or outside Indiana.~~

~~(d) Subsection (c) shall not apply when the commissioner determines that the foreign or alien insurer's domiciliary jurisdiction or state of entry provides by statute protection that is substantially similar to that provided by this chapter for residents of Indiana.~~

(b) An obligation undertaken by the association under subsection (a) with respect to a covered policy of an impaired insurer ceases on the date the covered policy is replaced by the policy owner, insured, or association.

(c) If a member insurer is an insolvent insurer, the association shall, in the association's sole discretion, do one (1) of the following for each covered policy:

(1) Guarantee, assume, reinsure, or perform, or cause to be guaranteed, assumed, reinsured, or performed, the contractual obligations of the covered policy or otherwise assure the discharge of the contractual obligations of the covered policy.

(2) Terminate existing benefits and coverage and provide benefits and coverages in accordance with the following provisions:

(A) For premiums identical to the premiums that would have been payable under the covered policy, assure payment of benefits arising under the contractual obligations, except for terms of conversion and nonrenewability, for:

(i) with respect to a group covered policy, claims incurred not later than the earlier of the next renewal date under the covered policy or forty-five (45) days, but not less than thirty (30) days, after the coverage date for the insolvent insurer; and

(ii) with respect to a nongroup covered policy, claims incurred not later than the earlier of the next renewal date under the covered policy or one (1) year, but in no event less than thirty (30) days, after the coverage date for the insolvent insurer.

(B) Make diligent efforts to provide each:

(i) known insured or annuitant, for a nongroup covered policy; and

(ii) owner, for a group covered policy;

at least thirty (30) days notice of the termination of the benefits provided.

(C) Make available substitute coverage, on an individual basis, to each:

(i) owner of a nongroup covered policy if the owner had a right to continue the nongroup covered policy in force until a specified age or for a specified period, during which time the insurer had no unilateral right to make changes in the nongroup covered policy's provisions or had only a unilateral right to make changes in premiums only by class; and

(ii) insured or annuitant under a group covered policy if the insured or annuitant is not eligible for any replacement group coverage and had a right, before termination of the group covered policy, to convert to individual coverage.

(D) In making available any substitute coverage under clause (C), the association may offer to reissue the terminated coverage or to issue an alternative policy or contract. If made available under clause (C), alternative or reissued policies and contracts must be offered without requiring evidence of insurability and must not impose any waiting period or coverage exclusion, other than a waiting period or coverage exclusion provided for in this chapter, that would not have applied under the terminated covered policy. The association may cause any alternative or reissued policy or contract to be assumed or reinsured.

(E) Use of alternative policies and contracts by the association is subject to the approval of the domiciliary insurance regulatory authority and the receivership court. The association may adopt alternative policies and contracts of various types for future issuance without regard to any particular impairment or insolvency. Alternative policies and contracts must contain at least the minimum statutory provisions required in Indiana and provide benefits that are reasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates adopted by the association. The premium must:

(i) reflect the amount of insurance to be provided and the age and class of risk of each insured; and

(ii) not reflect changes in the health of the insured after the terminated covered policy was last underwritten.

Subject to coverage exceptions, exclusions, and limitations provided for in this chapter, an alternative policy or contract issued by the association must provide coverage similar, in material respects, to the coverage under the terminated covered policy as determined by the association.

(F) If the association elects to reissue terminated coverage at a premium rate different from the premium rate charged under the terminated covered policy, the association shall set the premium in accordance with a table of rates adopted by the association. The premium:

(i) must reflect the amount of insurance to be provided and the age and class of risk of each insured; and

(ii) is subject to approval of the domiciliary insurance regulatory authority and the receivership court.

(G) The association's obligations with respect to coverage under a covered policy of an insolvent insurer or under a reissued or alternative policy or contract ceases on the date the coverage or covered policy is replaced by another similar policy by the policy owner, insured, or association.

(H) Subject to subsection (u), when proceeding under this subdivision with respect to a covered policy carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with section 2.3(e)(3) of this chapter.

(3) Take any combination of the actions set forth in subdivisions (1) and (2).

(d) The association may provide money, pledges, loans, notes, or guarantees, or use other means that the association, in the association's sole discretion, determines are necessary or appropriate to discharge the association's duties under subsection (c).

(e) Failure to pay premiums within thirty-one (31) days after the date that payment is due under the terms of a guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage terminates the association's obligations under this chapter with respect to the policy, contract, or coverage, except with respect to claims incurred or net cash surrender value due under this chapter.

(f) Premiums due for coverage after the coverage date for an impaired insurer or insolvent insurer belong to and are payable at the direction of the association, and the association is liable for unearned premiums payable to policy or contract owners with respect to premiums received by the association.

(g) The protection provided by this chapter does not apply where any guaranty protection is provided to residents of this state by the laws of the domiciliary state ~~or jurisdiction~~ of the impaired **insurer** or insolvent insurer **if the domiciliary state is a state other than Indiana.**

~~(c)~~ **(h)** In carrying out its duties under ~~subsections (b), and~~ **subsection** (c), ~~permanent policy liens or contract liens may be imposed by~~ the association ~~in connection with a guarantee, assumption, or reinsurance agreement, if a court:~~ **may, subject to approval by a court in Indiana, impose:**

(1) **permanent policy or contract liens, if the association** finds that:

(A) the amounts that can be assessed under this chapter are less than the amounts needed to assure full and prompt performance of the ~~insolvent insurer's contractual obligations,~~ **association's duties under this chapter;** or ~~that the~~

(B) economic or financial conditions, as they affect member

insurers, are sufficiently adverse **so as** to render the imposition of **the permanent** policy or contract liens to be in the public interest; and

~~(2) approves the specific policy liens or contract liens to be used. A court may make findings under subdivision (1) and approve policy liens or contract liens under subdivision (2) in any proceeding under IC 27-9 with respect to an insolvent insurer (including a proceeding under IC 27-9-4 in which affected policyholders or contract holders are given reasonable notice and an opportunity to be heard), or in an original proceeding involving a foreign or alien insurer instituted by the association against affected policyholders or contract holders who are residents of Indiana. Any policyholder or contract holder affected by a court's decision under this subsection may appeal the decision in the manner that appeals are taken from final judgments in other civil actions. All parties to the proceeding shall take note of and be bound by the appeal, but the appeal does not stay the proceeding.~~

~~(f) Before being obligated under subsections (b) and (c), the association may request that there be imposed temporary moratoriums or liens on payments of cash values and policy loans in addition to any contractual provisions for deferral of cash or policy loan values.~~

(2) temporary moratoriums or liens on payments of cash values and policy loans or any other right to withdraw funds held in conjunction with a covered policy, in addition to any contractual provisions for deferral of cash or policy loan value. In addition, in the event of a temporary moratorium or moratorium charge imposed by the receivership court on payments of cash values or policy loans or any other right to withdraw funds held in conjunction with a covered policy out of the assets of the impaired insurer or insolvent insurer, the association may defer the payment of cash values, policy loans, or other rights by the association for the period of the moratorium or moratorium charge imposed by the receivership court, except for claims covered by the association to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court.

(i) A deposit in Indiana, held by law or required by the commissioner for the benefit of creditors, including policy owners, that is not turned over to the domiciliary receiver before or promptly after the coverage date for an impaired insurer or insolvent insurer under IC 27-9-4-3 must be promptly paid to the association. The association:

(1) may retain a part of an amount paid to the association under this subsection equal to the percentage determined by dividing the aggregate amount of policy owners' claims related to the impairment or insolvency for which the association provides statutory benefits by the aggregate amount of all policy owners' claims in Indiana related to the impairment or insolvency; and

(2) shall remit to the domiciliary receiver the difference

between the amount paid to the association and the amount retained by the association under this subsection.

An amount retained by the association under this subsection must be treated as a distribution of estate assets under IC 27-9-3-32 or similar provision of the state of domicile of the impaired insurer or insolvent insurer.

~~(g)~~ **(j)** If the association fails to act within a reasonable period of time as provided in ~~subsections (b), and~~ **subsection** (c) ~~of this section,~~ **with respect to an insolvent insurer,** the commissioner has the powers and duties of the association under this chapter with respect to **the** insolvent ~~insurers.~~ **insurer.**

~~(h) Upon request,~~ **(k)** The association may, **upon the commissioner's request,** assist and advise the commissioner concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of an impaired **insurer** or insolvent insurer.

~~(i)~~ **(l)** The association ~~is entitled~~ **has standing and the right** to appear **or intervene** before ~~any~~ **a** court **or an agency** in Indiana **or elsewhere** with jurisdiction over an impaired **insurer** or insolvent insurer ~~to whom~~ **for which** the association is or may become obligated under this chapter **or with jurisdiction over a person or property against which the association may have rights through subrogation or otherwise.** Standing extends to all matters germane to the **rights,** powers, and duties of the association, including proposals for reinsuring, **modifying,** or guaranteeing the ~~covered~~ policies **or contracts** of the impaired **insurer** or insolvent insurer and the determination of the ~~covered~~ policies **or contracts** and contractual obligations.

~~(j)~~ **(m)** A person receiving benefits under this chapter ~~assigns~~ **is considered to have assigned:**

(1) the **person's** rights under; **and**

(2) any cause of action against another person for losses arising under, resulting from, or otherwise relating to;

the covered policy to the association to the extent of the benefits received ~~by that person~~ because of this chapter, whether the benefits are payments of **or on account of** contractual obligations or continuation of coverage **or provision of substitute or alternative coverage.** The association may require an assignment to it of those rights **and causes of action** by a payee, policy or contract owner, **certificate holder,** beneficiary, insured, or annuitant as a condition precedent to the receipt of any ~~rights~~ **right** or benefits conferred by this chapter on ~~that~~ **the** person. ~~The association is subrogated to these rights against the assets of an insolvent insurer.~~

~~(k)~~ **(n)** The subrogation rights of the association **under subsections (m) and (o)** have the same priority against the assets of the **impaired insurer or** insolvent insurer as those possessed by the person entitled to receive benefits under this chapter.

~~(l) The association may not become liable for the contractual obligations of an insolvent insurer in excess of what the contractual~~

~~obligations of the insolvent insurer would have been in the absence of an insolvency, unless the obligations are reduced as permitted by subsection (c). However, the aggregate liability of the association with respect to covered policies other than unallocated annuity contracts is not to exceed one hundred thousand dollars ($100,000) in cash values, or three hundred thousand dollars ($300,000) for all benefits, including cash values, with respect to any one (1) life. The aggregate liability of the association with respect to covered unallocated annuity contracts shall not exceed five million dollars ($5,000,000) for all benefits, including cash values, with respect to any one (1) contract holder, irrespective of the number of unallocated annuity contracts held by the contract holder.~~

(o) In addition to the rights conferred by subsections (m) and (n), the association has all common law rights of subrogation and any other equitable or legal remedy with respect to a covered policy that would have been available to the:

(1) impaired insurer or insolvent insurer;

(2) owner, beneficiary, or payee of a policy or contract with respect to the policy or contract, including, in the case of a structured settlement annuity, rights of the owner, beneficiary, or payee of the annuity, to the extent of benefits received under this chapter, against a person:

(A) who is originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment for the annuity; and

(B) whose responsibility is not solely because of the person serving as an assignee in respect of a qualified assignment under Section 130 of the Internal Revenue Code; and

(3) certificate holder, or the beneficiary or payee of the certificate holder, with respect to a certificate.

(p) If subsection (m), (n), or (o) is invalid or ineffective with respect to a person or claim, the amount payable by the association with respect to the related covered policies must be reduced by the amount realized by another person with respect to the person or claim that is attributable to the covered policies.

(q) If the association provides benefits with respect to a covered policy and a person recovers amounts to which the association has rights as described in subsection (m), (n), or (o), the person shall pay to the association the part of the recovery attributable to the covered policies.

~~(m)~~ **(r)** The association may **do the following:**

(1) Enter into contracts necessary **or appropriate** to carry out the provisions **and purposes** of this chapter.

(2) Sue or, **subject to section 14 of this chapter,** be sued, including taking legal actions necessary **or appropriate** to recover unpaid assessments under section 6 of this chapter **and to resolve claims or potential claims against or on behalf of the association.**

(3) Borrow money to effect the ~~provisions~~ **purposes** of this chapter

and issue notes or other evidences of indebtedness of the association with respect to borrowings. Notes or other evidences of indebtedness described in this subdivision that are not in default are legal investments for domestic insurers and may be carried as admitted assets.

(4) Employ or retain persons necessary **or appropriate** to handle the financial transactions of the association ~~or~~ **and** to perform other functions necessary **or appropriate** under this chapter.

~~(5) negotiate and contract with a liquidator, a rehabilitator, a conservator, or an ancillary receiver to carry out the powers and duties of the association;~~

~~(6)~~ **(5)** Take legal action necessary **or appropriate** to avoid **or recover** payment of improper claims. ~~and~~

~~(7)~~ **(6)** Exercise, for the purposes of this chapter and to the extent approved by the commissioner, the powers of a domestic life or health insurer. However, in no case may the association issue insurance policies or annuity contracts other than those issued to perform the ~~contractual~~ **association's** obligations ~~of the impaired or insolvent insurer.~~ **under this chapter.**

(7) Request information from a person seeking coverage from the association to aid the association in determining and discharging the association's obligations under this chapter with respect to the person. The person shall promptly comply with the request.

(8) Settle claims and potential claims by or against the association.

(9) Exercise all rights, privileges, and powers granted to the association by any other laws of Indiana or another jurisdiction.

(10) Take other necessary or appropriate action to discharge the association's duties and obligations under this chapter or to exercise the association's rights and powers under this chapter.

(s) The association may belong to one (1) or more organizations of one (1) or more other state associations of similar purpose to further the purpose and administer the powers and duties of the association.

~~(n) Any notes or other evidence of indebtedness of~~ **(t)** The association ~~not in default are legal investments for domestic insurers~~ **has discretion** and may ~~be carried as admitted assets.~~ **exercise reasonable business judgment to determine the means by which the association is to discharge, in an economical and efficient manner, the association's obligations under this chapter.**

(u) In discharging the association's obligations and exercising the association's rights and powers under subsections (a) and (c), the association may, subject to approval of the receivership court, provide substitute coverage for a covered policy that provides for the covered policy's interest rate, crediting rate, or similar factor employed in calculating returns or changes in value to be

determined by use of an index or other external referent stated in the covered policy by issuing an alternative policy or contract in accordance with the following provisions:

(1) Instead of the index or other external referent stated in the covered policy, the alternative policy or contract may provide for:

(A) a fixed interest rate;

(B) payment of dividends with minimum guarantees; or

(C) a different method for calculating returns or changes in value.

(2) A:

(A) requirement for evidence of insurability; or

(B) waiting period or an exclusion, other than a waiting period or an exclusion provided for in this chapter;

that would not have applied under the covered policy may not be imposed.

(3) The alternative policy or contract must provide coverage similar, in material respects, to the coverage under the covered policy, after taking into account the exceptions, exclusions, and limitations provided for in this chapter, as determined by the association.

SECTION 15. IC 27-8-8-5.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 5.2. (a) At any time within one (1) year after the coverage date for an impaired insurer or insolvent insurer, the association may elect, subject to subdivisions (1) through (4), to succeed to the rights and obligations of the impaired insurer or insolvent insurer that accrue on or after the coverage date and that relate to covered policies under one (1) or more indemnity reinsurance agreements entered into by the impaired insurer or insolvent insurer as a ceding insurer. However, the association may not exercise an election with respect to a reinsurance agreement if the receiver, rehabilitator, or liquidator of the impaired insurer or insolvent insurer has previously and expressly disaffirmed the reinsurance agreement. The election by the association must be effected by a notice to the receiver, rehabilitator, or liquidator and to the affected reinsurers specifying the reinsurance agreement concerning which the association has made the foregoing election. If the association makes an election, the following apply with respect to the agreements selected by the association:**

(1) The association is responsible for:

(A) all unpaid premiums due under the agreements for periods before and after the coverage date; and

(B) the performance of all other obligations of the impaired insurer or insolvent insurer to be performed after the coverage date;

that relate to covered policies. The association may charge covered policies that are only partially covered by the

association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the association.

(2) The association is entitled to any amount payable by the reinsurer under the selected agreements:

(A) with respect to losses or events that occur during periods after the coverage date; and

(B) that relate to covered policies.

Of the amount received from the reinsurer, the association is obliged to pay to the beneficiary under the covered policy on account of which the amount was paid a portion of the amount equal to the excess of the amount received by the association over benefits paid by the association on account of the covered policy less the retention of the impaired insurer or insolvent insurer applicable to the loss or event.

(3) Within thirty (30) days after the association's election, the association and each indemnity reinsurer shall calculate the net balance due to or from the association under each reinsurance agreement as of the date of the association's election, giving full credit to all items paid by the:

(A) impaired insurer or insolvent insurer, or the impaired insurer's or insolvent insurer's receiver, rehabilitator, or liquidator; or

(B) indemnity reinsurer;

during the period between the coverage date and the date of the association's election. Either the association or indemnity reinsurer shall pay the net balance due the other not more than five (5) days after the completion of the calculation. If the receiver, rehabilitator, or liquidator has received any amount due the association under subdivision (2), the receiver, rehabilitator, or liquidator shall remit the amount to the association as promptly as practicable.

(4) If the association, within sixty (60) days of the election, pays the premiums due for periods before and after the coverage date that relate to covered policies, the reinsurer is not entitled to:

(A) terminate the reinsurance agreements insofar as the agreements relate to covered policies; or

(B) set off any unpaid premium due for periods before the coverage date against amounts due the association.

(b) If the association transfers any of the association's obligations to another insurer, and if the association and the other insurer agree, the other insurer succeeds to the rights and obligations of the association under subsection (a) with respect to the transferred obligations effective as of the date agreed upon by the association and the other insurer and regardless of whether the association has made the election referred to in subsection (a), except that the:

(1) indemnity reinsurance agreements automatically terminate for new reinsurance unless the indemnity reinsurer and the other insurer agree to the contrary; and

(2) obligations of the association described in subsection (a)(2) no longer apply on and after the date the indemnity reinsurance agreement is transferred to the third party insurer.

This subsection does not apply if the association has previously notified the receiver, rehabilitator, or liquidator and the affected reinsurer in writing that the association will not exercise the election referred to in subsection (a).

(c) Subsections (a) and (b) supersede any other law or affected reinsurance agreement that provides for or requires payment of reinsurance proceeds, on account of losses or events that occur after the coverage date, to the receiver, liquidator, or rehabilitator of the impaired insurer or insolvent insurer. The receiver, rehabilitator, or liquidator remains entitled to amounts payable by the reinsurer under the reinsurance agreement with respect to losses or events that occur before the coverage date, subject to applicable setoff provisions.

(d) Except as provided in subsections (a), (b), and (c), this chapter does not alter or modify the terms and conditions of indemnity reinsurance agreements of the insolvent insurer.

(e) This chapter does not:

(1) abrogate or limit the rights of a reinsurer to claim that the reinsurer is entitled to rescind a reinsurance agreement; or

(2) give a policy owner or beneficiary an independent cause of action against an indemnity reinsurer that is not otherwise set forth in the indemnity reinsurance agreement.

SECTION 16. IC 27-8-8-5.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 5.4. If the association has arranged or offered to discharge the association's obligations under this chapter with respect to contractual obligations owed to a person entitled to coverage under this chapter:**

(1) the person, and any other person claiming by, through, or under the person, is not entitled to benefits from the association in addition to or other than benefits arranged or offered by the association; and

(2) the association is relieved of further obligation with respect to the contractual obligations if the person rejects, declines, or otherwise fails to accept the association's arrangement or offer.

SECTION 17. IC 27-8-8-5.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 5.5. (a) Venue in a suit against the association is in Marion County.**

(b) The association is not required to give an appeal bond in an appeal that relates to a cause of action arising under or with respect to this chapter.

SECTION 18. IC 27-8-8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) For the purpose of providing funds necessary to carry out the powers and duties

of the association and necessary to pay administrative costs and expenses incurred by the commissioner in supervising the association and discharging the commissioner's obligations under this chapter, the board ~~of directors~~ shall assess the member insurers, separately for each account, ~~as established in section 3 of this chapter,~~ at a time and for amounts as the board finds necessary. Assessments are due **not less than** thirty (30) days after prior written notice to the member insurers **and accrue** interest ~~is~~ at six percent (6%) per ~~year~~ **annum** on and after the due date.

(b) ~~Three (3)~~ **There are two (2)** classes of assessments ~~are established~~ as follows:

(1) ~~The first, to be referred to as~~ Class A ~~consists of~~ assessments ~~made~~ **are assessments that are authorized and called by the board** for the purpose of meeting administrative **and legal** costs and other ~~general~~ expenses. ~~including examinations conducted under section 9(f) of this chapter~~ **Class A assessments may be authorized** and **called whether or** not related to a particular impaired **insurer** or insolvent insurer.

(2) ~~The second class, to be referred to as~~ Class B ~~consists of~~ assessments ~~made~~ **are assessments that are authorized and called by the board** to the extent necessary to carry out the powers and duties of the association under ~~section 5 of~~ this chapter with regard to an impaired **insurer** or insolvent ~~domestic~~ insurer.

~~(3) The third class, to be referred to as Class C, consists of assessments made to the extent necessary to carry out the powers and duties of the association under section 5 of this chapter with regard to an insolvent foreign or alien insurer.~~

~~(c) The amount of a Class B or C assessment must be allocated among the three (3) accounts, set out in section 3 of this chapter, in proportion to the contractual obligations on the policies covered by each account.~~

~~(d) The amount of a Class A assessment to be paid by each member insurer shall be determined by the board and may be made on a nonproportional basis. The amount assessed a member insurer each calendar year may not exceed fifty dollars ($50), and the amount must be credited against future insolvency assessments.~~

~~(e) Except as provided in subsection (o), a member insurer shall only pay a proportion of a Class B assessment for those accounts that the member has in common with the impaired or insolvent domestic insurer in each state that the impaired or insolvent domestic insurer and member insurer have been authorized to transact the business of insurance. For each account that the member has in common with the impaired or insolvent domestic insurer in each state, the member insurer shall pay an amount equal to the product of:~~

~~(1) the total amount of the Class B assessment allocated to the account; multiplied by~~

~~(2) a fraction:~~

~~(A) the numerator of which is the premiums received on business in that state on policies covered by the account for the year~~

~~preceding the year in which this assessment is made; and~~

~~(B) the denominator of which is the premiums received by all assessed member insurers on business in that state for the calendar year preceding the year this assessment is made.~~

~~(f) A member insurer shall only pay a proportion of a Class C assessment that the member has in common with the insolvent foreign or alien insurer. For each account that the member insurer has in common with the insolvent foreign or alien insurer, the member insurer shall pay an amount equal to the product of:~~

~~(1) the total amount of the Class C assessment allocated to the account; multiplied by~~

~~(2) a fraction:~~

~~(A) the numerator of which is the premiums received on business in Indiana on policies covered by the account for the year preceding the year in which this assessment is made; and~~

~~(B) the denominator of which is the premiums received by all member insurers on business in Indiana for the calendar year preceding the year this assessment is made.~~

~~(g) Assessments shall not be made~~

(c) The amount of a Class A assessment must be determined by the board and may be authorized and called on a pro rata or non-pro rata basis. If pro rata, the board may provide that the assessment be credited against future Class B assessments. The total of all non-pro rata assessments must not exceed one hundred fifty dollars ($150) per member insurer in any one (1) calendar year.

(d) The amount of a Class B assessment must be allocated for assessment purposes among the accounts under an allocation formula that may be based on the premiums or reserves of the impaired insurer or insolvent insurer or another standard considered by the board in the board's sole discretion as fair and reasonable under the circumstances.

(e) Class B assessments against member insurers for each account and subaccount with respect to an impaired insurer or insolvent insurer must be allocated among the assessed member insurers in the proportion that the premiums received in Indiana by each assessed member insurer on policies and contracts covered by the account or subaccount during the assessment base year for the impaired insurer or insolvent insurer bears to premiums received in Indiana by all assessed members on policies and contracts covered by the same account or subaccount during the same assessment base year.

(f) Assessments for funds to meet the requirements of the association with respect to an impaired insurer or insolvent insurer must not be authorized or called until necessary to implement the purposes of this chapter. Classification of assessments under subsection (b) and computation of assessments **under subsections (c), (d), and (e)** must be made ~~as accurately as possible.~~ **with a reasonable degree of accuracy, recognizing that exact determinations are not always**

possible. The association shall notify each member insurer of the member insurer's anticipated share of an assessment that has been authorized but not yet called not more than one hundred eighty (180) days after the assessment is authorized.

~~(h)~~ **(g)** The association may abate or defer, in whole or in part, the ~~amount of an~~ assessment ~~that~~ **of** a member insurer ~~is to pay~~ if, in the opinion of the board, payment **of the assessment** would endanger the ability of the member insurer to fulfill its ~~contractual~~ **policy and contract** obligations. In the event an assessment against a member insurer is abated or deferred in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the ~~computation provided for~~ **basis for assessments set forth** in this section. **Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay assessments that were deferred under a repayment plan approved by the association.**

~~(i)~~ **(h) Subject to subsection (i),** the total ~~amount~~ of all assessments ~~to be paid by~~ **authorized by the association in one (1) calendar year against** a member insurer for ~~each~~ **a given subaccount of the life insurance and annuity** account ~~in any one (1) calendar year may~~ **or for the health insurance account with respect to any single assessment base year must** not exceed two percent (2%) of the **member insurer's** premiums received ~~by the insurer from business~~ in Indiana ~~during the calendar year preceding the assessment~~ on the policies **and contracts** covered by ~~each~~ **the subaccount or** account **during the applicable assessment base year.**

(i) If two (2) or more assessments are authorized in one (1) calendar year with respect to impaired insurers or insolvent insurers having different assessment base years, the annual premium used for purposes of determining the aggregate assessment percentage limitation referenced in subsection (h) must be equal to the higher of the annual premiums for the applicable subaccount or account as calculated under this section.

(j) If the maximum assessment, ~~for each account~~ together with other assets of the association in ~~that~~ **an** account, does not provide **in one (1) year in the account** an amount sufficient to carry out the responsibilities of the association, ~~for one (1) year,~~ additional funds must be assessed as soon as permitted by this chapter.

(k) The board may provide in the plan of operation a method of or procedure for allocating funds among claims relating to one (1) or more impaired insurers or insolvent insurers when the maximum assessment is insufficient to cover anticipated claims.

(l) If the maximum assessment for a subaccount of the life insurance and annuity account in one (1) year does not provide an amount sufficient to carry out the responsibilities of the association, the board shall, under subsection (e), access the other subaccounts of the life insurance and annuity account for the necessary additional amount, subject to the maximum stated in subsections (h) and (i).

~~(k)~~ **(m)** The board may, **by an equitable method or procedure** as established in the plan of operation, refund to member insurers, in proportion to ~~their~~ **the** contribution **of each member insurer to the account,** the amount by which the assets of the account **exceed the amount the board determines is necessary to carry out the obligations of the association with regard to the account,** including assets accruing from **assignment, subrogation,** net realized gains, and income from investments. ~~exceed the amount the board finds necessary to carry out the obligations of the association.~~ A reasonable amount may be retained in an account to provide funds for the continuing expenses of the association and for **the** future ~~losses if refunds are impractical.~~ **discharge of the association's obligations.**

~~(l)~~ ~~An~~ **(n) It is proper for a member** insurer, in determining its premium rates and policyowner dividends as to **any type of** insurance within the scope of this chapter, ~~may take into consideration~~ **to consider** the amount **reasonably** necessary to meet its assessment obligations under this chapter.

~~(m)~~ **(o)** The association shall issue to each **member** insurer paying **an assessment under this chapter, other than** a ~~Class B or C~~ **Class A** assessment, a certificate of contribution, in a form prescribed by the commissioner, for the amount of ~~each~~ **the** assessment paid. All outstanding certificates are of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the **member** insurer in its financial statement as an asset in ~~a~~ **the** form and for ~~an~~ **the** amount and period of time as the commissioner may approve.

~~(n) The board may, as established in the plan of operation, agree to accord a member insurer a credit against the amount of a Class B or C assessment otherwise payable by that member insurer with respect to contractual obligations of an impaired or insolvent insurer to the extent, but only to the extent, that the member insurer has, by means of payment, guarantee, assumption, or reinsurance, taken action to reduce the contractual obligations of the impaired or insolvent insurer with respect to which the assessment is made and for which the association would otherwise be responsible.~~

~~(o) Notwithstanding subsection (c), this subsection applies where a domestic insurer has been subject to proceedings under IC 27-9-3 and the initial proceeding was filed after December 31, 1985. A member insurer shall only pay a proportion of a Class B assessment for those accounts that the member has in common with the impaired or insolvent domestic insurer in Indiana. For each account that the member has in common with the impaired or insolvent domestic insurer in Indiana, the member insurer shall pay an amount equal to the product of:~~

~~(1) the total amount of the Class B assessment allocated to the account; multiplied by~~

~~(2) a fraction:~~

~~(A) the numerator of which is the premiums received on business in Indiana on policies covered by the account for the year preceding the year in which this assessment is made; and~~

~~(B) the denominator of which is the premiums received by all assessed member insurers on business in Indiana for the calendar year preceding the year this assessment is made.~~

SECTION 19. IC 27-8-8-6.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 6.2. (a) A member insurer that wishes to protest all or part of an assessment made under section 6 of this chapter shall pay when due the full amount of the assessment as set forth in the notice provided by the association. The payment is available to meet association obligations during the pendency of the protest or a subsequent appeal. Payment must be accompanied by a statement in writing that the payment is made under protest and set forth a brief statement of the grounds for the protest.**

(b) Not more than sixty (60) days after the payment of an assessment under protest by a member insurer, the association shall notify the member insurer in writing of the association's determination with respect to the protest (unless the association notifies the member insurer that additional time is required to resolve the issues raised by the protest).

(c) Not more than sixty (60) days after receipt of notice of the association's determination with respect to a protest, the protesting member insurer may appeal the determination to the commissioner.

(d) Instead of making a determination with respect to a protest based on a question regarding the assessment base, the association may refer the protest to the commissioner for a determination, with or without a recommendation from the association.

(e) If a protest of an assessment is upheld, the amount paid by the protesting member insurer in error or excess must be returned to the member insurer. Interest on a refund due to a protesting member insurer must be paid at the rate actually earned by the association.

SECTION 20. IC 27-8-8-6.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 6.5. (a) The association may request information from a member insurer to aid in the exercise of the association's power under sections 6 and 6.2 of this chapter.**

(b) A member insurer that receives a request under subsection (a) shall promptly comply with the request.

SECTION 21. IC 27-8-8-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) The association shall submit to the commissioner a plan of operation and any amendments to ~~it~~ **the plan of operation that are necessary or appropriate** to assure the fair, reasonable, and equitable administration of the association. The plan of operation ~~is~~ **and an amendment to the plan of operation are** effective:

(1) if the plan or amendment is not disapproved by the commissioner within thirty (30) days after being submitted to the commissioner; or

(2) upon the commissioner's **written** approval, ~~which must be written. All member insurers must comply with the plan of operation.~~ **if sooner than the time set in subdivision (1).**

(b) If the association fails to submit a suitable plan of operation within one hundred eighty (180) days from September 1, 1978, or if at any other time the association fails to submit suitable amendments to the plan, the commissioner shall adopt rules under IC 4-22-2 necessary to effectuate the provisions of this chapter. The rules continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(c) A member insurer shall comply with the plan of operation.

~~(c)~~ **(d)** The plan of operation must, in addition to requirements stated elsewhere in this chapter establish:

(1) procedures for handling the assets of the association;

(2) the amount and method of reimbursing members of the board ~~of directors~~ under section 4 of this chapter;

(3) regular places and times for meetings, **including, if desired by the association, telephone conference calls,** of the board; ~~of directors;~~

(4) procedures for records to be kept of all financial transactions of the association, its agents, and the board; ~~of directors;~~

(5) procedures whereby selections for the board ~~of directors~~ will be made and submitted to the commissioner; **and**

(6) any additional procedures for assessments under ~~section~~ **sections** 6 **and 6.2** of this chapter. ~~and~~

~~(7)~~ **The plan of operation may contain** additional provisions necessary **or appropriate** for the execution of the powers and duties of the association.

~~(d)~~ **(e)** The plan of operation may provide that any or all powers and duties of the association, except those under ~~subdivision 5(m)(3) and section~~ **sections 5(r)(3),** 6, **6.2, and 6.5** of this chapter, ~~are~~ **may be** delegated to a corporation, association, or other organization that **performs or** will perform functions similar to those of ~~this~~ **the** association, or its equivalent, in two (2) or more states. The corporation, association, or organization ~~is to~~ **must** be reimbursed for payments made on behalf of the association and ~~is to~~ **must** be paid for its performance **of any function of the association.** A delegation under this subsection takes effect only ~~upon~~ **with the** approval of both the board ~~of directors~~ and the commissioner and may be made only to a corporation, association, or organization that extends protection that is **not** substantially ~~similar to~~ **less favorable and effective than** that provided by this chapter.

(f) To the extent and in the manner specified in the plan of operation, the board may create one (1) or more committees, each of which may exercise the authority of the board to the extent specified in the plan of operation or by the board.

SECTION 22. IC 27-8-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) The commissioner shall **do the following:**

(1) Upon request of the board, ~~of directors,~~ provide the association with a statement of the premiums in ~~the~~ **Indiana and other** appropriate states for each member insurer.

(2) When an impairment is declared and the amount of the impairment is determined, serve a demand on the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer shall constitute notice to its shareholders. The failure of the insurer to promptly comply with the demand shall not excuse the association from the performance of its powers and duties under this chapter.

(3) In any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator. ~~and (4) if a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry, be appointed conservator.~~

(b) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in Indiana of a member insurer ~~who~~ **that** fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a forfeiture on a member insurer ~~who~~ **that** fails to pay an assessment when due. A forfeiture shall not exceed five percent (5%) of the unpaid assessment per month, but no forfeiture shall be less than one hundred dollars ($100) per month.

(c) ~~Any~~ **A final** action of the **association or the** board ~~of directors or the association~~ may be appealed to the commissioner by a member insurer ~~an~~ **if the** appeal ~~must be~~ **is** taken within ~~thirty (30)~~ **sixty (60)** days of **the member insurer's receipt of notice of** the **final** action **being appealed.** A final action or order of the commissioner is subject to judicial review **in a court with jurisdiction in accordance with the Indiana law that applies to the actions or orders of the commissioner.**

(d) The liquidator, rehabilitator, or conservator of an impaired **insurer or insolvent** insurer ~~must~~ **may** notify all interested persons of the effect of this chapter.

SECTION 23. IC 27-8-8-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) To aid in the detection and prevention of insurer insolvencies or impairments, the commissioner shall **do the following:**

(1) Notify the ~~commissioners~~ **insurance regulatory authorities** of all the other states ~~territories of the United States and the District of Columbia~~ **not more than thirty (30) days after the date an action taken by the commissioner occurs** when ~~he~~ **the commissioner** takes any of the following actions against a member insurer:

(A) Revokes ~~its license,~~ **the member insurer's certificate of authority.**

(B) Suspends ~~its licenses, or~~ **the member insurer's certificate of authority.**

(C) ~~makes any~~ **Issues a** formal order that ~~a company~~ **the**

member insurer restrict its premium writing, obtain additional contributions to surplus, withdraw from Indiana, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of ~~policyholders~~ **policy owners** or creditors.

(2) Report to the ~~board of directors~~ **association** when ~~he~~ **the commissioner** takes any of the actions set forth in subdivision ~~(a)(1)~~ **(1)** or when ~~he~~ **the commissioner** has received a report from any other ~~commissioner~~ **insurance regulatory authority** indicating that an action has been taken in another state. The report to the ~~board of directors~~ **association** must contain all significant details of the action taken or of the report received from another ~~commissioner;~~ **insurance regulatory authority.**

(3) Report to the ~~board of directors~~ **association** when ~~he~~ **the commissioner** has reasonable cause to believe from ~~any~~ **an** examination, whether completed or in process, of a member ~~company~~ **insurer** that **the member insurer** may be ~~an~~ impaired or insolvent. ~~insurer; and~~

(4) Furnish to the ~~board of directors the NAIC Early Warning Tests~~ **association the NAIC Insurance Regulatory Information System (IRIS) ratios and listings of companies not included in the ratios** developed by the National Association of Insurance Commissioners. The ~~board~~ **association** may use the information contained in ~~those tests~~ **the ratios and listings** in carrying out its duties and responsibilities under this chapter. The report ~~shall~~ **and the information contained in the report must** be kept confidential **by the association** until made public by the commissioner or other **lawful** authority.

~~(b) The notice required under subdivision 9(a)(1) must be mailed to all commissioners within thirty (30) days from the action taken.~~

~~(c)~~ **(b)** The commissioner may seek the advice **and recommendations** of the ~~board of directors~~ **association** concerning a matter affecting ~~his~~ **the commissioner's** duties and responsibilities in regard to the financial condition of member ~~companies~~ **insurers** and companies seeking admission to transact insurance business in Indiana.

~~(d)~~ **(c) The association may,** upon majority vote **by** the board, ~~of directors may~~ make reports and recommendations to the commissioner on any matter ~~related~~ **germane** to the solvency, liquidation, rehabilitation, or conservation of a member insurer or ~~related~~ **germane** to the solvency of any company seeking to do **an** insurance business in Indiana. The reports and recommendations are not public documents.

~~(e)~~ **(d) The association may,** upon majority vote **by** the board, ~~of directors shall~~ notify the commissioner of any information indicating that a member insurer ~~is~~ **may be** impaired or insolvent.

~~(f) Upon majority vote, the board of directors may request that the commissioner order an examination of a member insurer the board believes to be impaired or insolvent. Within thirty (30) days of the receipt of the request, the commissioner shall begin an examination. The examination may be conducted as a National Association of~~

~~Insurance Commissioners examination or may be conducted by persons designated by the commissioner. The cost of the examination shall be paid by the association and the examination report shall be treated as all other examination reports. In no event may the examination report be released to the board of directors before its release to the public, but this does not preclude the commissioner from complying with subsections (a) and (b) of this section. The commissioner shall notify the board of directors when the examination is completed. The request for an examination is to be kept on file by the commissioner but it is not open to public inspection before the release of the examination report.~~

~~(g)~~ **(e) The association may,** upon majority vote **by** the board, ~~of directors may~~ make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

~~(h) The board of directors shall, at the conclusion of an insurer insolvency in which the association was obligated to pay covered claims, prepare a report to the commissioner containing information on the history and causes of the insolvency. The board shall also cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes for insolvency of an insurer, and may adopt by reference any report prepared by other associations.~~

SECTION 24. IC 27-8-8-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. ~~(a) Nothing in this chapter shall be construed as reducing the liability for unpaid assessments of the insureds on an impaired or insolvent insurer operating under a plan with assessment liability.~~

~~(b)~~ **(a)** Records must be kept of all ~~negotiations and~~ meetings ~~in which the association or its representatives were involved in discussing~~ **of the board to discuss** the activities of the association in carrying out its powers and duties under ~~section~~ **sections** 5, **5.2, and 5.4** of this chapter. Records of ~~negotiations or meetings are to be made public only upon:~~ **the association with respect to an impaired insurer or insolvent insurer must not be disclosed except:**

(1) **after the** termination of ~~a~~ **the** liquidation, rehabilitation, or conservation proceeding involving the impaired **insurer** or insolvent insurer; **or**

~~(2) termination of the impairment of insolvency of the insurer; or~~

~~(3) court order.~~

(2) upon the order of a court with jurisdiction if the order is made before the time described in subdivision (1).

~~(c) Nothing in subsection (a) limits~~ **This subsection does not limit** the duty of the association to ~~present~~ **submit** a report of its activities under section 12 of this chapter.

~~(d)~~ **(b)** For the purpose of carrying out its obligations under this chapter, the association is a creditor of the impaired **insurer** or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts ~~to which~~ **that** the association ~~is entitled~~ **has received, from a person other than the impaired insurer or insolvent insurer,** as subrogee under ~~section 5~~ **section 5(m), 5(o), and**

5(q) of this chapter. Assets of the impaired **insurer** or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired **insurer** or insolvent insurer as required by this chapter. "Assets attributable to covered policies", as used in this subsection, is that proportion of the assets that the reserves that should have been established for such policies bear to the reserves that should have been established for all policies of insurance written by the impaired **insurer** or insolvent insurer.

(c) As a creditor of an impaired insurer or insolvent insurer under subsection (b) and consistent with IC 27-9-3-32, the association and other similar associations are entitled to receive disbursements of assets out of the marshaled assets, as the assets become available to reimburse the association or another similar association, as a credit against contractual obligations under this chapter. If the liquidator has not, within one hundred twenty (120) days after a member insurer becomes an insolvent insurer, made an application to the court for the approval of a proposal to disburse assets out of marshaled assets to guaranty associations having obligations because of the insolvency, the association is entitled to make application to the receivership court for approval of the association's own proposal to disburse the assets.

~~(c)~~ **(d)** Before the termination of a liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the **respective** parties, including the association, the shareholders and policy owners of the **impaired insurer or** insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the **impaired insurer or** insolvent insurer. ~~Consideration should be given to~~ **In making the determination, the court shall consider** the welfare of the ~~policyholders~~ **policy owners** of the continuing or successor insurer.

~~(f) No~~ **(e) A** distribution to stockholders of an impaired **insurer** or insolvent insurer ~~may~~ **must not** be made until the total amount of valid claims **of the association, with interest,** for funds expended ~~by~~ **in carrying out** the ~~association~~ **association's powers and duties under sections 5, 5.2, 5.4, and 5.5 of this chapter with respect to the impaired insurer or insolvent insurer,** have been **fully** recovered **by the association.**

SECTION 25. IC 27-8-8-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) **Subject to subsections (b) through (d),** if an order for liquidation or rehabilitation of an insurer domiciled in Indiana has been entered, the receiver appointed under the order shall have a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five (5) years preceding the **filing of the** petition for liquidation or rehabilitation.

(b) ~~No dividend~~ **A distribution described in subsection (a)** is **not** recoverable if the insurer shows that when the ~~dividend~~ **distribution**

was paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill ~~its contractual~~ **the insurer's policy and contract** obligations.

(c) A person who was an affiliate ~~controlling~~ **that controlled** the insurer at the time ~~the distributions were~~ **a distribution described in subsection (a) was** paid is liable up to the amount of distributions ~~he~~ **the person** received. A person who was an affiliate ~~controlling~~ **that controlled** the insurer at the time the distributions were declared shall be liable up to the amount of distributions ~~he~~ **that** would have **been** received if ~~they~~ **the distributions** had been paid immediately. If two (2) **or more** persons are liable with respect to the same distributions, they are jointly and severally liable.

(d) The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the insolvent insurer to pay the ~~contractual~~ **policy and contract** obligations of the insolvent insurer.

(e) If a person liable under ~~this section~~ **subsection (c)** is insolvent, the affiliates ~~controlling it~~ **that controlled the person** at the time the ~~dividend~~ **distribution** was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

SECTION 26. IC 27-8-8-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. **(a)** The association is subject to examination and regulation by the commissioner. The ~~board of directors~~ **association** shall **annually** submit to the commissioner, not later than ~~May 1 of each~~ **one hundred twenty (120) days after the end of the association's fiscal** year, a financial report ~~for the preceding calendar year,~~ in a form approved by the commissioner and a report of its activities during the preceding ~~calendar~~ **fiscal** year.

(b) Upon the request of a member insurer, the association shall provide to the member insurer a copy of the reports described in subsection (a).

SECTION 27. IC 27-8-8-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. **(a)** A member insurer ~~or it's~~ **and the member insurer's** agents ~~or~~ **and** employees, the association ~~or its~~ **and the association's** agents ~~or~~ **and** employees, members of the board ~~of directors or~~ **and representatives of the members of the board, and** the commissioner ~~or his~~ **and the commissioner's** representatives are not liable for and no cause of action **of any nature arises or** may be brought against them ~~because of their performance~~ **for or in connection with an action or omission by any of them in the exercise and performance of their rights, powers, and duties** under this chapter.

(b) Immunity under this section extends to:

(1) the participation in an organization of one (1) or more other state associations of similar purpose; and

(2) an organization described in subdivision (1) and an agent

or employee of the organization.

SECTION 28. IC 27-8-8-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. All proceedings in which an insolvent insurer is a party **in any court** in Indiana shall be stayed **for** sixty (60) days from the date an order of liquidation ~~rehabilitation, or conservation~~ is ~~final~~ **entered** to permit proper legal action by the association on matters ~~related~~ **germane** to its powers or duties. **As to judgment under any decision, order, verdict, or finding based on default,** the association may apply to have ~~any~~ **the** judgment set aside by the same court that made the judgment and is entitled to defend against the suit on the merits.

SECTION 29. IC 27-8-8-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. **A** member ~~insurers who, during any preceding calendar year, have paid one (1) or more assessments levied under this chapter~~ **insurer** may ~~either:~~

~~(1)~~ take as a credit against premium taxes, adjusted gross income taxes, or any combination of them ~~upon revenue or income of member insurers that may be~~ imposed by ~~Indiana~~ **the state** ~~up to~~ **upon the member insurer's revenue or income not more than** twenty percent (20%) of ~~an~~ **the amount of each** assessment described in section 6 of this chapter for each calendar year following the year in which ~~those assessments were~~ **the assessment was** paid until **the assessment has been offset by either credits against the taxes or refunds from the association. If** the ~~aggregate of those~~ **member insurer ceases doing business, all uncredited** assessments ~~have been offset by either credits against those~~ **may be credited against the member insurer's premium** taxes, **adjusted gross income taxes,** or ~~refunds from the association; or~~

~~(2) include in the rates and premiums charged for insurance policies to which this chapter applies amounts sufficient to recoup a sum equal to the amounts paid to the association by the member less any amounts returned to~~ **a combination of the premium taxes and adjusted gross income taxes of** the member insurer ~~by the association and the rates are not excessive by virtue of including an amount reasonably calculated to recoup assessments paid by the member.~~ **for the year the member insurer ceases doing business.**

SECTION 30. IC 27-8-8-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17. **(a)** Sums acquired by refund **under section 6(m) of this chapter** from the association ~~that have been written off~~ by member insurers and offset against taxes as provided by section 16 of this chapter ~~and not needed for the purposes of this chapter,~~ shall be paid by the **member insurers to the state in the manner required by the tax authorities.**

(b) The association ~~to~~ **shall notify** the commissioner ~~for deposit with the state treasurer for deposit in the general fund.~~ **when refunds under section 6 of this chapter have been made.**

SECTION 31. IC 27-8-8-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 18. **(a)** A person,

including an insurer, insurance producer, **employee, agent,** or affiliate of an insurer, shall not **make, publish, disseminate, circulate, or** place before the public **or cause,** directly or indirectly, **to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, an advertisement,** an announcement, or **a** statement, **written or oral,** that uses the existence of the association for the purpose of ~~sales,~~ **the sale of,** solicitation **of**, or inducement to purchase any form of insurance covered by this chapter. This section does not apply to the association or any other entity that does not sell or solicit insurance.

(b) Not later than January 1, 2007, the association shall:

(1) prepare a summary document:

(A) describing the general purposes and current limitations of this chapter; and

(B) complying with subsection (c); and

(2) submit the summary document to the commissioner for approval.

Sixty (60) days after the date on which the commissioner approves the summary document, a member insurer may not deliver a policy or contract to a policy or contract owner unless the summary document is delivered to the policy or contract owner at the time of delivery of the policy or contract. The summary document must also be available upon request by a policy owner. The distribution, delivery, or contents or interpretation of the summary document does not guarantee that the policy or contract or the owner of the policy or contract is covered in the event of the impairment or insolvency of a member insurer. The summary document must be revised by the association as amendment to this chapter requires. Failure to receive the summary document does not give a policy owner, a contract owner, a certificate holder, or an insured greater rights than the rights specified in this chapter.

(c) The summary document prepared under subsection (b) must contain a clear and conspicuous disclaimer on the face of the summary document. The commissioner shall approve the form and content of the disclaimer. The disclaimer must, at a minimum, convey all the following:

(1) State the name and address of the association and the department of insurance.

(2) Prominently warn that:

(A) the association might not cover the policy or contract; and

(B) even if coverage were currently provided, coverage is:

(i) subject to substantial limitations and exclusions;

(ii) generally conditioned on continued residence in Indiana; and

(iii) subject to possible change as a result of future amendments to this chapter and court decisions.

(3) State the types of policies for which the association currently provides coverage.

(4) State that the member insurer and the member insurer's agents are prohibited by law from using the existence of the association for the purpose of selling, soliciting, or inducing purchase of any form of insurance.

(5) State that the policy owner or contract owner should not rely on coverage under this chapter when selecting an insurer.

(6) Explain:

(A) rights available following; and

(B) procedures for filing a complaint to allege;

a violation of any provision of this chapter.

(7) Provide other information as directed by the commissioner, including sources for information that:

(A) is not proprietary; and

(B) is subject to disclosure under IC 5-14-3;

concerning the financial condition of an insurer.

(d) A member insurer shall retain evidence of compliance with subsection (b) until the policy or contract for which the notice is given is no longer in effect.

SECTION 32. THE FOLLOWING ARE REPEALED [EFFECTIVE UPON PASSAGE]: IC 27-8-8-1; IC 27-8-8-1.5.

SECTION 33. IC 27-1-20-34 IS REPEALED [EFFECTIVE JULY 1, 2006].

SECTION 34. [EFFECTIVE UPON PASSAGE] **(a) The definitions in IC 27-8-8-2, as amended by this act, apply throughout this SECTION.**

(b) The association's coverage obligations under IC 27-8-8 with respect to a member insurer that has a coverage date before the effective date of this act are not affected by changes made by this act.

(c) The association's coverage obligations under IC 27-8-8 with respect to a member insurer that has a coverage date before the effective date of this act are governed by IC 27-8-8 as it existed on January 1, 2006.

SECTION 35. [EFFECTIVE JULY 1, 2006] **(a) The definitions in IC 27-1-29.1 apply throughout this SECTION.**

(b) This SECTION applies to a member that:

(1) has been a member of the fund for at least ten (10) years; and

(2) provided a withdrawal notice in 2005 for the 2006 calendar year insured period.

(c) A member described in subsection (b) may:

(1) withdraw from the fund with proper notice; and

(2) elect to receive a one-time rebate of fifteen percent (15%) of the member's prior assessments, not to exceed one million dollars ($1,000,000), from the reserve account established under IC 27-1-29.1-8 to establish a self-insured retainage account.

(d) The commission shall pay a rebate described in subsection (c) to a member making an election under subsection (c) at any time the reserve account exceeds the five million dollar ($5,000,000) balance required under IC 27-1-29.1-8(a).

(e) Notwithstanding IC 27-1-29.1-21, after a member described in this SECTION withdraws from the fund and receives a rebate under this SECTION:

(1) the member is released from all liability to the fund related to claims based on acts or omissions of other members that took place while the member was a member of the fund; and

(2) the fund is released from all liability related to claims based on acts or omissions of the member that took place while the member was a member of the fund.

(f) This SECTION expires December 31, 2008.

SECTION 36. **An emergency is declared for this act.**

(Reference is to EHB 1392 as printed February 17, 2006.)

Conference Committee Report
on
Engrossed House Bill 1392

Signed by:

_____ Representative Ripley
Chairperson

_____ Senator Paul

_____	_____
Representative Fry	Senator Lewis
House Conferees	**Senate Conferees**